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J. H. 1826

AN INQUIRY,

INTO

THE ELECTIVE FRANCHISE

OF

The Freeholders

OF,

AND THE RIGHTS OF ELECTION

FOR,

THE CORPORATE COUNTIES

IN

ENGLAND AND WALES:

ALSO,

A REPORT OF THE PROCEEDINGS OF THE WARWICKSHIRE ELECTION COMMITTEE, IN 1821.

BY UVEDALE CORBETT, ESQ.

OF LINCOLN'S-INN, BARRISTER AT LAW.

Deinceps in lege est, ut de ritibus patriis colantur optimi: de quo cum consulerent Athenienses Apollinem Pythium, quas potissimum religiones tenerent, oraculum editum est, *eas, quæ essent in more majorum.* Quo cum iterum venissent, majorumque morem dixissent sæpe esse mutatum, quæsivissentque, quem morem potissimum sequerentur e variis; respondit, *optimum.* Cic. de Leg. lib. 11.

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PREFACE.

THE object of this Publication is not only to show the present state of the elective franchise in the corporate counties, but also, by a reference to general and local history, to point out the origin of that franchise; and the effects produced upon it by creating cities and towns distinct counties. For this purpose I have thought it advisable, first, to take a short review of the history of parliament and the origin of counties; secondly, to make a few general observations on the nature of corporate counties, their usages and charters; and lastly, to give a short account of each, together with such extracts from charters and proceedings in the courts of law and parliament, as are calculated to show the situation of each place both before and after it who made a distinct county.

I do not affect to pursue this inquiry as an antiquary, but merely to communicate,

in a practical shape, the information I have been able to collect upon a subject to which my attention was professionally called, and which appeared deserving of further investigation. The corporate counties being so numerous, I have not scrupled to avail myself of the charters and historical facts communicated by local historians, endeavouring, by a reference to the corporate officers, or some friend possessing legal as well as local information, to avoid either the introduction or circulation of error. In each instance, that part of the charter which creates the corporate county, as well as those of any charter which contains a reservation of former privileges, are given at length; but in consequence of the numerous charters to which it is necessary to refer, and the great expence of office copies, I have only had recourse to such when unable to meet with any other which was authentic. These extracts may by some be considered too concise, and by others of unnecessary length; and it is admitted, where the documentary matter is so voluminous, a difficulty has been often felt in determining what alone it was necessary to insert. Also the separate account given of each place leads unavoidably

to the frequent repetition of grants of similar import.

In most instances I have inserted a few of the earlier writs and returns, which show that when a town was made a county of itself the sheriff or sheriffs succeeded the mayor or bailiffs as the returning officers, and that the elections were thenceforth made in the county court; but I have not given a detailed account of them, for the same reason which deterred me from procuring office copies of the charters.

As those forty-shilling freeholders of Exeter, who have been resident forty days, bed and board, within the city, exercise the right of voting together with the freemen, (*vide post.* p. 176,) I may seem guilty of an oversight in not classing that place with those of which the freeholders vote in conjunction with the freemen. On the hearing of the petition which forms the subject of the annexed report it was so considered. But I conceive it ought not to be classed with Bristol, &c. where the freeholders vote without any other qualification being superadded, because at Exeter the possession of a freehold of forty shillings per annum does not confer a vote unless coupled with residence

within the city. In 1660 a question was raised, whether the right of election for Exeter belonged to the freemen alone, or to the freeholders and freemen together, when the House of Commons decided that it belonged to the freemen. (*Vide post*. p. 178.) This resolution negatives the right of the freeholders, and I have been unable to find any subsequent decision of that body in which it is recognized. But if the qualified nature of the freeholder's right as now exercised is considered, they may fairly be taken to vote as inhabitants, and not merely as freeholders; in which case, the usage which sanctions the exercise of this right would not be inconsistent with the resolution of 1660. I think this the fair construction, and therefore class Exeter with those places where the freeholders do not vote. I was led to do so at first (notwithstanding the admission in the Warwick case, *v. post* 405) by the uncontradicted resolution of 1660, and held the same opinion when subsequently assured of the existence of the present usage, but as pages 28 and 39 were printed off, I was unable to make this explanation among the general observations, where it would have occurred with greater propriety.

I gladly avail myself of this opportunity to offer my thanks to those gentlemen connected with the corporate counties who have afforded me assistance in this investigation; also to Mr. Jones, the clerk of elections, for granting me access to the minutes of the proceedings before the committees on contested elections.

CONTENTS.

Introduction.

CORPORATE counties, decisions respecting, page 1.—Origin and constitution of parliament, 4.—Witenagemot, 5.—Great council from 1st W. I. to 49th Hen. III, 6.—History and constitution of parliament from 49th Hen. III. to 7th Hen. IV, 17.—Ib. from 7th Hen. IV. to 10th Hen. VI, 28.—Ib. subsequent to 10th Hen. VI, 33.—Counties, origin of, 35.—How made, 38.—Welsh, 40.—Corporate, 41.—Palatine, 42.—Effect of alteration of on elective franchise, 43.

General Observations.

Power of the crown to make a county by charter, 1.—Cases recognizing, 3.—Corporate counties, number of, 16.—Charters granted to, ib.—Nature of, 17.—Right of voting retained for parent county, where, 19.—Freeholders vote for town members, where, 28.—Effect of charters creating corporate counties on parliamentary rights, 29.—Freemen alone vote, where, 39.—London, 41.—Right of election settled by act of parliament, where, ib.—Charters confirmed by parliament, 44.—Resolutions on right of election, ib.—Usage, effect of, 45.—Irish corporate counties, 47.

Bristol.

Account of, 49.—Charters, ib.—County of itself, 53.—Members to serve for knights and burgesses, 57.—Reservation of former privileges, 58.—Perambulation of the

county of the city, 60.—Confirmation of charter by parliament, 62.—Castle added to the county of the city, 66.—Local government, 74.—Right of election, ib.—Writs and returns, 75.—Bye-law of corporation, 88.—Contested elections, 89.

Canterbury.

Account of, 90.—Charters, ib.—County of itself, 95.—Reservation of privileges, 98.—Observations on, ib.—Local government, 101.—Right of election, 102.—Petitions and resolutions, ib.

Carmarthen.

Account of, 104.—Charters, 105.—County of itself, 106. 111.—Reservation of privileges, ib.—Local government, 118.—Right of election, ib.—Petitions and resolutions, 119.

Chester.

Account of, 121.—Charters, 122.—County of itself, 123.—Reservation of privileges, 126.—Note on counties palatine, 128.—Members granted to by act of parliament, 129.—Other acts respecting, 132.—Local government, 133.—Right of election, 134.—Petitions and resolutions, ib.

Coventry.

Account of, 136.—Charters, 138.—Charter 30 Hen. VI, 147.—County of itself, ib.—Reservation of privileges, 155.—Local government, 158.—Right of election, 159.—Petitions and resolutions, ib.—Act of parliament respecting, 161.

Exeter.

Account of, 163.—Charters, ib.—County of itself, 164.—Reservation of privileges, 165.—Act of parliament respecting, 166.—Local government, 175.—Right of election, ib.—Return, ib.—Petitions and resolutions, 176.

Gloucester.

Account of, 179.—Charters, ib.—County of itself, 181. 187.—Hundreds of Dudston and King's Barton, 182. 185. 197.—Provision respecting members of parliament, 193.—Reservation of privileges, 194.—Local government, 198.—Right of election, 199.—Returns, ib.—Decisions on charter 1st R. III, 201.

Haverfordwest.

Account of, 212.—Charters, ib.—County of itself by charter, ib.—By act of parliament, 213.—Limits of, extended by charter, 215.—Local government, 216.—Right of election, ib.—Petitions and resolutions, 217.—Observations, 221.

Kingston-upon-Hull.

Account of, 223.—Charters, 224.—County of itself, 226.—Reservation of privileges, 228.—Limits of county extended, 229.—Local government, 232.—Right of voting, 233.—Returns, ib.—Petitions, 234.

Lichfield.

Account of, 238.—Charters, ib.—County of itself, 240.—Reservation of privileges, 241.—Privileges of the close, 242.—Local government, 243.—Right of election, 244.—Petitions and resolutions, ib.

Lincoln.

Account of, 248.—Charters, ib.—County of itself, 250. 254.—Reservation of privileges, 253.—Braunston, &c. added to the county of the city, 256.—Local government, 258.—Right of election, ib.—Return, 259.

London.

Account of, 261.—Charters, ib.—Middlesex granted to the citizens, 262.—Privileges confirmed by Magna Charta, 266.—By acts of parliament, 267.—Right of election, 269. 272.—Writs and returns, 269.

Newcastle-upon-Tyne.

Account of, 276.—Charters, ib.—County of itself, 283.—Moot hall and Castle Garth vested in the justices of Northumberland by act of parliament, ib.—Local government, 287.—Right of election, ib.—Return, 288.

Norwich.

Account of, 289.—Charters, 290.—County of itself, 301.—Reservation of privileges, 303.—Agreement respecting the election of members, ib.—Precinct of the priory restored to the county of the city, 305.—Privileges confirmed by parliament, 306.—Local government, 308.—Right of election, ib. 313.—Returns, 310.—Petitions and resolutions, ib.—Observations, 315.

Nottingham.

Account of, 317.—Charters, ib.—Confirmation of privileges, 320.—County of itself, 322.—Reservation of privileges, 324.—Local government, 327.—Right of election, 328.—Petitions and resolutions, ib.—Justices of the county empowered to act within the county of the town, 329.—Petition 1819, 330.—Ib. 1820, report of, 332.—Writ and return for, 335.

Poole.

Account of, 340.—Charters, ib.—County of itself, 345.—Reservation of privileges, 346.—Local government, 349.—Right of election, 350.—Petitions and returns, ib.

Southampton.

Account of, 354.—Charters, ib.—County of itself, 356.—Reservation of privileges, 361.—Local government, 362.—Right of election, 363.—Return, ib.—Petitions and resolutions, 364.

Worcester.

Account of, 368.—Charters, ib.—County of itself, 369.—Reservation of privileges, 373.—Local government, 375.—Petitions and resolutions, ib.

York.

Account of, 377.—Charters, ib.—County of itself, 380.—Ainsty, history of, 383.—Annexed to the county of the city, 385.—Reservation of privileges, 388.—Local government, 389.—Right of election, ib.—Return, 390.—Petition and resolution, 391.

Warwick County Election Case.

Names of committee, 397.—Petitions, ib.—Petitioners evidence, 398.—Sitting member's evidence, 403.—Argument for petitioners, 406.—Ib. for sitting member, 421.—Reply, 433.—Proceedings of the committee, 438.—Resolutions of, 439.

ERRATA.

Introduction, p. 5, n. (*c*), l. 13, for *erga* read *a rege.*
Ib. p. 7, margin, for *Archoæol.* read *Archæol.*
Inquiry, p. 22, l. 10, for *and* read *but.*
31, n. (*q*), l. 14, after fig. 18, for (;) read (.)
44, l. 2, for *freemen* read *freeman.*
63, n. (*b*), l. 2, for *by* read *in that of.*
75, l. 29, for *Beauhine* read *Beaupine.*
76, l. 13, for *Coadjunatis* read *Coadunatis.*
81, l. 24, for *valorum* read *valorem.*
101, l. 1, for *hat* read *that.*
136, l. 24, for *Stirhall* read *Stirchall.*
145, n. (*c*), l. 7, for *firme* read *ferm.*
185, l. 4, for *provision* read *provisions.*
201, l. 16, for *honour* read *power.*
224, margin, for *Turv.* read *Tur.*
228, ib. for *Reservation of former privileges* read *Confirmation of privileges.*
281, l. 29, for *nullos* read *nullus.*
287, l. 3, for *Ch.* read *Car.*
324, l. 25, for *villa* read *villæ.*
417-18, margin, for *Sherrey* read *Sherry.*

INTRODUCTION.

THE rights and disabilities incident to the Freeholders in those places, which having been created distinct counties by charter are usually termed Corporate Counties, and the anomaly which they present in the representative history of this country, are deserving of some attention; more especially, as the circumstances affecting these peculiar jurisdictions have hitherto met with little investigation.

Some decisions indeed have taken place in the courts of law upon the effect of the charter creating the city of Gloucester a county of itself, but these do not embrace any inquiry into the elective rights of the freeholders. The house of commons also, in 1735, came to a resolution on the right then claimed by the freeholders of the Ainsty of York to vote at the election of knights for the county of York; but this decision being grounded upon the wording of the charter by which that

district was annexed to the county of the city of York, and not on general principles, it does not necessarily affect the freeholders of any other corporate county.

County of the city of Coventry.

These were the principal instances (*a*) in which the effects of the charters creating corporate counties had been considered, previous to the decision in 1821 on the claim of the Coventry freeholders, which was brought before the committee in the following motion:

"That before the charter creating the city of Coventry into a county, in the 30th year of the reign of king Henry VI, the freeholders holding freeholds within the said city had a right to vote at the election of knights of the shire for the county of Warwick; that the said charter did not and could not divest the aforesaid freeholders of their right to vote at such election, and that therefore the vote of Joseph Sowden, a freeholder, whose freehold is situate within the county of the city of Coventry, and whose vote was tendered for the petitioner at the last election for the county of Warwick, ought to have been then received, and be now added to the poll."

This motion was negatived; and no appeal having been brought, it is conclusive as to the right then claimed. But inasmuch as there are

(*a*) *Et vid.* Rex *v.* The Inhabitants of the City of Norwich, *post.*

eighteen cities and towns, which have been created separate and distinct counties by royal charter or letters patent, differing, not only in the terms of creation, but also in the privileges which they enjoy, and the disabilities to which they are subject, the question is not set at rest, but remains open for further investigation.

V. Appendix, Warwick Case.

I originally intended to have published a mere report of the proceedings before the committee appointed to try the merits of the last election for the county of Warwick, with a few explanatory notes; but finding the history of each corporate county afforded considerable matter for observation, I have been induced to collect those facts which are calculated to illustrate, or account for the variance between the usages which obtain in these places, and to prefix the result of this inquiry to the report of the decision of that committee, "on the claim of the freeholders in Coventry to vote at the election of knights for the county of Warwick;" and as the prosecution of this inquiry will be assisted by a reference to our early history, as well as to acts of parliament, and the decisions which have taken place on particular charters, I propose in the first place shortly to notice those subjects which, in a constitutional and historical point of view, are best calculated to throw light upon it.

The points which it will be more particularly necessary to consider in the discussion of this subject are,—

First, The origin and constitution of parliament, and the derivation of the elective franchise of the freeholder.

Secondly, The division of England into counties, the time when, and the mode in which that was effected; likewise, how far it is in the power of the crown to alter the extent or limits of any county, or to create a new one, by charter or letters patent.

Thirdly, Whether any such alteration did or could affect the elective franchise of the freeholder.

Origin and constitution of parliament.

The origin and constitution of parliament, or of that body which has from time immemorial, under various denominations, participated with the crown in the government of this country, are subjects of admitted difficulty and doubt (*b*). But whatever difficulty may have been found in tracing

(*b*) "When parliament began, or in what right, or in what form, is an inquiry impossible to be clearly discovered; partly, for that the records of such antiquity are not extant; partly, because the history of former times never made any precise discovery of the form or practice of them, as not suspecting a change or alteration, and therefore passing over the particular description of them as impertinent. Hence, we have mention of *consilium magnatum*, sometimes of *convocatio cleri et populi*, sometimes of *consilium magnum*, sometimes of *curia regis*, which, though they seem to intend the same thing, yet the different expressions make the thing uncertain." Hale's Incepta Juribus Coronæ, cit. in Hargrave's Preface to Hale on the Jurisdiction of the Lords' House, or Parliament, p. 80.

out, either the origin or the constitution of this assembly, it cannot be doubted, that, from the earliest period to which our annals refer, a body, represented by, and in some measure, analogous to, the parliament of later times, met for purposes of deliberation and legislation; and further, that this body has undergone from time to time great and various alterations.

Origin and constitution of parliament.

That the great landed proprietors, such as ealdormen, eorls, bishops, &c. (*c*) were members of the Witenagemot during the Saxon æra is cer-

The Witenagemot.

(*c*) Hody supposes, that in the Saxon times the bishops and abbots sat in the great council as such, and not in right of tenure; but that after the Conquest the abbots sat there in right of tenure, and the bishops in the double capacity of bishops and barons. Hody on Convocations, p. 126.

Selden notices the following writ of summons, directed to the bishop of Salisbury in the 6th of John, as the most ancient which he had seen: "Mandamus vobis rogantes quatenus omni occasione et dilatione postposita, sicut nos et honorem nostrum diligitis, sitis ad nos apud London die dominica proxime ante Ascensionem Domini, nobiscum tractaturi de magnis et arduis negotiis nostris et communi regni utilitate. Quin super his quæ erga Franciæ per nuncios nostros et suos nobis mandata sunt, unde per Dei gratiam bonum speramus pervenire, vestrum expedit habere consilium et aliorum magnatum terræ nostræ quos ad diem illum et locum fecimus convocari; vos etiam ex parte nostra et vestra abbates et priores conventuales totius diocesis citari facietis, ut consilio predicto intersint sicut diligunt nos et communem regni utilitatem." Dors. Claus. 6 Jn°. v. Memb. 9. Seld. Tit. Hon. 736.

Origin and constitution of parliament.

tain, and that all persons who held lands of the crown *in capite* (*d*), whether to a sufficient extent to confer upon them any title of honour or not, is probable; and there is little doubt that such alone were members of it, although some authors have contended that the seeds of our representative system were then sown, and that all the freemen in the land appeared at the gemot by their representatives. Be this as it may, we find the right of the people to a share in their own government established at this period, which has happily continued a leading feature of our constitution, although history leaves us too much in doubt as to the precise manner in which it was then exercised, to draw much practical information from the records of those times.

The great council after the Conquest.

Having by a reference to our Saxon history pointed out the source from whence the parliaments of later ages have sprung, we will next inquire what shape this body assumed under the Norman kings.

From 1 W. 1. to 49 Hen. 3.

First, we will consider the history of the great national council from the time of the Conquest to the 49th of Hen. III. the date of the first authentic

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(*d*) "To hold of the king in capite, was to hold of him immediately, sine medio." Mad. Bar. Ang. 164.

"And this tenure of the king in capite is said to be a tenure of the king as of his crown, that is, as he is king." 1 Inst. 108. a; *et vid.* 2 Roll. Abr. 504; Dyer, 44; F. N. B. 5.

record of any persons sitting in a great council or parliament (*e*) in the character of representatives.

Origin and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

From the reign of Will. I. to that of Hen. III. the great council or parliament met, not only at the three great festivals of the church *de more*, but frequently at other times when summoned by the crown.

That the barons and ecclesiastical dignitaries, together with all others who held of the crown in capite, were members of this assembly, is beyond dispute. But whether they alone composed it, or formed merely a part in conjunction with others, who sat there as the representatives of the people, has afforded more topics for controversy in former days, than of doubt in the present (*f*).

Maseres Archaeol. v. 2, p. 308. Hody, 57.

(*e*) It is most probable that the term Parliament was substituted for the Saxon titles of Witenagemot, Micel Synoth, &c. since the Conquest, and according to some authorities was then used to describe the conferences between the king and the people, and not to denominate the body conferring. 4 Inst. p. 2. Lambard's Archaion, 234.

Hody is of opinion, that the great council was not so called before the middle of the reign of Hen. III. Hody on Convocations, 125; *et vid.* the Authorities collected by Whitelocke, v. 1, p. 172.

(*f*) "When and in what king's reign writs for electing knights, citizens, and burgesses, to serve in our great councils and parliaments were first issued, and they upon the people's free choice admitted into them as members, is a great yet undecided controversy among antiquarians and writers of our English parliaments.[1] Some conceit that there were knights, citizens, burgesses, and commons, in

[1] Mr. William Lambard, his Archaion, p. 242 to 273. Mr. Nathaniel Bacon.

History and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

That the dignified clergy, and tenants in capite alone were members of this assembly, and that in

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the reigns of our Saxon kings, before the Conquest, summoned as members to their grand councils, and included, together with the nobles, under the names of sapientes and the like; for proof whereof they much insist upon the pretended antient treatise, styled, Modus tenendi Parliamentum, which of truth is but a late absurd imposture, though cried up by[1] Sir Edward Coke (who over doted on it) for a most antient record, beyond all exceptions, relying upon it as an undoubted oracle. Others refer their original to the parliamentarie council held at Salisbury in the 16th year of king Hen. I, to which opinion Polydore Virgil, Holingshed, Speed, in their histories, anno 1216, Justice Dodderig, Mr. Cambden, Mr. Agar, and Joseph Holland, in their treatises of the[2] antiquity of the parliaments of England[3], Sir Walter Raleigh[4] and others, incline as most probable; which I have at large refuted in my Plea for the Lords, p. 165 to 183, by unanswerable evidences. Sir Rob. Cotton[5] and Mr. Selden[6], two of our learnedest and most judicious antiquaries, do rather incline, that the writs for electing knights, citizens, and burgesses, began but about the latter end of king Hen. III, and that the first writ of this kind now extant is that in cl. 49 Hen. III; before which time I conceive it can hardly be made good by history or records, that anie knights, citizens, burgesses or commons, elected by the people or others, were called to our great councils or parliaments as members of them. That which induceth me to adhere to this opinion, are not only the histories and records I have elsewhere cited[7], during the reigns of king Hen. I, king Stephen, Hen. II, Richard I, king John, and Hen. III, of all the parliamentarie councils held under them before this year, which make no mention of any such knights, citizens, burgesses or commons, summoned to or present in them as members; but only of the archbishops, bishops, abbots, friars, earls, nobles, and great men of the realme;

[1] 4 Inst. p. 12. 349; 1 Inst. p. 110; 2 Inst. p. 7, 8.

[2] p. 18, 19, 20. 40. 85. 87.

[3] The Prerogative of the Parliament of England, p. 2, 3.

[4] The Freeholders Grand Inquest, p. 12, 13.

[5] Posthuma, p. 346-7-8.

[6] Tit. Hon. p. 712-13-17.

[7] Plea for the Lords, p. 30 to 35. 57 to 128, 203 to 262. The supplement to it, p. 401 to 407, and epistle before the first part of the register.

History and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

a personal right, would be consistent with the state of property, and the small progress which liberty and learning had made in those days; which opinion is confirmed by no certain document or satisfactory authority having yet been produced to show, that the representatives of the people formed any part of that body prior to the 49th Hen. III. Consistent, also, with this opinion is that clause (*g*) in magna charta, which provides,

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but these memorable writs entered in the clause roll of 48 Hen. III. which assure us, that there was a parliamentarie council summoned and held this year by the king, his prelates, lords, nobles and barons, and a tenth granted him by the prelates and lords, ordained how to be levied and expended for the common benefit of the realm and church of England, by their unanimous counsil and advice, without the least mention at all of anie knights, citizens, burgesses or commons, called to or acting in it in any kind." Prynne, Brev. Parl. red. part 2, p. 3, 4.

Hist. of the Anglo-Saxons, v. 3, p. 180.

Among later writers on this subject, Mr. Turner has given it as "the inclination of his belief, after many years consideration of the question, that the Anglo-Saxon Witenagemot very much resembled our present parliament in the orders and persons that composed it; and that the members who attended as representatives were chosen by classes analogous to those who now possess the elective franchise." It would be foreign to the object of this work to combat the opinions of individual authors at length; but it is conceived that this opinion will be found to be ably refuted, either by the clear statement of Mr. Maseres, or the satisfactory reasoning of Mr. Hallam, upon the effect of those documents which have induced some of the earlier writers, before mentioned, to arrive at the same conclusion as Mr. Turner. Archæologia, v. 2. p. 309. Mid. Ages, c. 8.

(*g*) "Et ad habendum commune concilium regni de

History and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

that the prelates, earls, and greater barons, shall be called to the great council, each by a particular summons from the crown, the tenants *in capite* by a general summons from the sheriffs; thus providing for the due attendance of every class of the great council, and in which no mention is made of any persons as the representatives of the people.

It is also to be remembered, that at the time of the Conquest most boroughs and towns were the property, either of the crown, or of some powerful noble (*h*); and that few, if any charters of enfranchisement, had been granted before the reign of Hen. I.

According to Domesday-book, those who held of the crown in chief at the time of the Conquest

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auxilio assidendo aliter quam in tribus casibus prædictis, vel de scutagio assidendo summoneri faciemus archiepiscopos, episcopos, abbates, comites et majores barones sigillatim per literas nostras. Et preterea faciemus summoneri in generali per vicecomites et baleivos nostros omnes illos qui de nobis tenent in capite ad certum diem, silicet ad terminum 40 dierum ad minus et ad certum locum et in omnibus literis illius summonitionis causam summonitionis exprimemus. Et sic facta summonitione ad diem assignatum procedat secundum concilium illorum qui presentes fuerint quamvis non omnes summoniti venerint." Mag. Cart. Red-book, in the Exchequer, fol. 234. This clause is omitted in the great charter of Hen. III.

(*h*) This is apparent from the numerous charters of enfranchisement granted to cities and towns, by the kings and nobles, between the reign of Hen. I. and Hen. III. Likewise from the various rights of toll-thorough, stallage, picage, &c. still retained in many instances; which show the fee of the soil to have been formerly vested in some superior lord.

History and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

were about seven hundred, a number not inconsistent with the supposition, that the great council was composed of these persons, together with the few who held lands of the crown by socage and military tenure (*i*).

From this period down to the present day, the number of free-landed proprietors has progressively increased. This change in the state of property was felt as early as the reign of king John, and would naturally account for that provision in magna charta before alluded to, respecting the mode in which the lesser barons should be summoned; their number, even at that period, rendering an individual summons inconvenient, if not impracticable (*k*). This increasing subdivision of

(*i*) "The barons and other tenants in chief of the king, in the time of the Conquerer, are all enumerated in Domesday-book, and are in number about seven hundred persons. These persons possessed all the lands of England, excepting that part which the king reserved in his own hands, and which is in Domesday-book called Terra Regis, and has since been called in the books, the ancient demesne of the crown of England. These tenants in chief, as well those few who held in socage, as those who held by military services, composed the great council or parliament of those times. They had a right, and it was their duty to come there of course, and without a summons, at the three great festivals above-mentioned, (i. e. *Christmas, Easter, and Whitsuntide*); and at the other meetings they, and they only, had a right to be summoned to them."—Maseres's View of the Antient Constitution of Parliament, Archæologia, v. 2. p. 309.

(*k*) "We meet with instances of the 100th and 300th part of a barony, yet the husband of the co-heiress of

History and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

land would also necessarily occasion many of the free-tenants to be persons of small property, and probably have rendered them ill qualified to give their personal attendance at the great council; a circumstance which would naturally make a change from personal attendance to one by representatives acceptable to the great body of the lesser barons, or smaller freeholders; as in those days, and even at a much later period, an individual attendance in parliament was considered as a burthensome (*l*) privilege.

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a barony, holding a part of a barony, and that often a very small one, in right of his wife had a right to a seat in parliament in consequence thereof, as is evident from the old books and records beyond dispute. This multiplied the numbers of the great council to a very inconvenient number, and it was likewise too expensive and burthensome to some of these poorer barons, who held by these small parts of baronies, to attend there. Hence arose the distinction between the barones majores and the barones minores, a distinction unknown in the reigns of the Conqueror and his two sons. Those barons who still continued to possess whole baronies were called barones majores, and those who held only parts of baronies, especially small parts, were called barones minores. But all had a right to come to parliament, and the only difference made between them in king John's magna charta is, that the king is bound thereby to send a particular summons to each of the barones majores to attend the parliament, and only to cause the barones minores to be summoned in general by the sheriff, that is I suppose by a proclamation in the king's name, made by the sheriff at a county court."—Maseres's View, &c. 323, 4; *et vid.* Seld. Tit. Hon. p. 737; Seld. Gloss. tit. Baro. p. 79; Wilk. Sax. Leg. p. 197.

(*l*) And probably still earlier was exacted as a service.

History and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

Origin of the knights of shires.

If this view of the parliamentary history of former days be correct, it affords an origin from which the descent of the knights of shires may be easily and rationally traced, as between the Conquest and the 49th Hen. III. three changes took place, agreeable to the concomitant alterations in the state of property and personal liberty; in each of which the importance of the personal right diminished, in proportion as the numbers who enjoyed it increased. At first, all those who held lands of the crown in capite were entitled, not only to a seat in the great council, but to receive a personal summons from the king, when their attendance was required. Afterwards, the right to a personal summons was confined to the greater barons and ecclesiastical dignitaries, the lesser barons or free tenants being summoned by the sheriff; and lastly, in the 49th Hen. III. the lesser barons, instead of being required to give their personal attendance, were directed to send two representatives from their body in each county.

Montfort's parliament, 49 Hen. III.

Whether this ought to be considered as the commencement of the representative system is a disputed (*m*) point, which I will not undertake to

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"The privilege of sitting and voting in parliament was not given by the Conqueror to those who held of him in chief as a privilege, but rather required as a service." Hody on Convocations, p. 130.

(*m*) The different opinions and authorities upon this subject are collected and examined in an able manner by Mr. Hallam, v. 3, c. 8; *et vid.* 4 Bl. Com. 149, *et ante*, note (*f*).

History and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

decide, although it seems most probable that it was rather the effect of convulsed times, than the free act of the king in the ordinary exercise of his prerogative, he being at that time a captive in the hands of Simon de Montfort, by whose name this parliament is generally known. For in the preceding year[1] a parliament was held, consisting of barons only; and Henry having subsequently defeated Montfort, called in the same year a parliament, to which also none but barons were summoned[2]. It should be observed, that these are the only writs which have yet been found, requiring the return of representatives to parliament, previous to the 18 Edw. I.

[1] Prynne, Brev. Parl. red. part 2, p. 4.

[2] Rot. Parl. 49 Hen. 3. n. 9. dors. Pref. Carew, 6.

In the close rolls of 49th Hen. III. this writ will be found as follows:

Writ of 49 Hen. 3.

"Rex Vicecomiti Salop et Stafford salutem. Cum prælatos, magnates, et nobiles regni nostri, tam pro negotio liberationis Edwardi primogeniti nostri, et securitate inde facienda, quam pro aliis communitatem regni nostri tangentibus, nuper vocari fecimus quod essent ad nos London in quindena sancti Hilarii proxime preterita, nobiscum super his tractaturi, et tibi sicut aliis vicecomitibus nostris per Angliam preciperimus quod de utroque comitatu predictorum, ad nos venire faceres ad predictos diem et locum, duos de discretioribus, et legatioribus militibus eorundem comitatuum, nobiscum et cum predictis magnatibus, ex parte communitate comitatuum illorum super premissis tractaturos, et consilium suum impensuros, ac de

partibus predictis juxta mandatum nostrum, ibidem non venerint aliqui milites, super quo miramur quamplurimum, et movemur, tibi precipimus iterate (*n*) firmiter injungentes, quod dictos milites ad nos venire facias. Ita quod modis omnibus sint ad nos, a festo cathedræ sancti Petri, in quindecem dies, ubi tum fuerimus in Anglia, nobiscum et cum magnatibus qui sunt de consilio nostro, super premissis negotiis locuturi, et ita te habeas in hoc mandato nostro exequendo, quod pro defectu tui, ad te minime capere debeamus. Teste Rege apud Westm. 23 die Feb."

History and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

It has been observed, "that it does not appear by this writ, whether the sheriffs or the counties were to elect these knights." Certain it is, that the terms in which the return is required to be made, are different from those made use of in the writs of 18 & 22 Ed. I. being "quod venire facias" and not "eligi facias," and therefore it is not improbable, that the selection was in this instance left to the sheriffs.

Ruff. pref. to Stat. p. 10; and see Brady, there cited.

It has also been stated by authors of considerable authority, that the sheriffs were at this time required, not only to return two knights for each

(*n*) From these expressions, it appears this was not the first, but the second writ issued for the summoning of this parliament. The troubled state of the kingdom may certainly account for the first writ having been imperfectly obeyed, and the more so, if this was the first time the sheriffs had been required to return knights to parliament in this manner.

History and constitution of parliament, from 1 W. 1. to 49 Hen. 3.

county, but likewise two citizens for each city, and two burgesses for each borough (*o*). It will however be seen, that the foregoing writ does not afford any authority for this statement, as it merely requires the sheriffs to return two of the more discreet and fitting knights of their respective counties; and the mistake has probably arisen from the circumstance, of York, Lincoln, and several other boroughs, having been written to at this period to send two of the most discreet of their body (*p*).

(*o*) "And this constitution has subsisted, in fact, at least from the year 1266, 49 Hen. III; there being still extant writs of that date to summon knights, citizens, and burgesses to parliament." 1 Bl. Com. 149.

"At length, in the year 1265, the 49th of Hen. III, while he was a captive in the hands of Simon de Montfort, writs were issued in his name to all the sheriffs, directing them to return two knights for the body of their county, with two citizens or burgesses for every city and borough contained within it." Hal. Mid. Ages, v. 3, p. 22.

(*p*) The first summons of these knights extant on record is the "49 Hen. III, and it doth not appear that the citizens and burgesses, who were at that time the true commons of the realm, were regularly summoned at this time. All we find is, that the cities of York and Lincoln, and other boroughs of England, were written to and required to send two of the most discreet men, &c." Ruff. Pref. Stat. p. 10; *et vid.* Pref. to Carew, p. 6.

It also should be observed, that the writs of the 18 & 22 of Ed. I. merely require the sheriff to return knights to parliament, and that the writ of the 23 Ed. I. is the first which directs him to return citizens and burgesses as well as knights. *vid. post.*

History and constitution of parliament, from 49 Hen. 3, to 7 Hen. 4.

This difference in the mode of procuring the attendance of the knights and burgesses, shows the improbability of any general or uniform system of representation having been established in those days. The next writ of this nature on record is that of the 18th Ed. I; and as this writ does direct the sheriff to cause two knights to *be elected*, and points out an undoubted æra from which they have formed an essential part of our parliament, I shall insert it:

Writ, 18 Ed. 1.

"Edwardus, Dei gratia, &c. Cum per comites, barones, et quosdam alios de proceribus regni nostri, nuper fuissemus super quibusdam specialiter requisiti, super quibus, tam cum ipsis, quam cum aliis de comitatibus regni illius colloquium habere volumus et tractatum, Tibi precipimus quod duos vel tres de discretioribus, et ad laborandum potentioribus militibus, de comitatu prædicto sine dilatione eligi, et eos ad nos usque Westmonasterium venire facias ita quod sint ibidem, a die sancti Johannis Bapt. prox. futur. in tres septimanas ad ultimum, cum plena potestate pro se et communitate comitat. prædicti, ad consulendum et consentiendum pro se et communitate illa, hiis quæ comites, barones, et proceres prædicti, tunc duxerint concordanda, et habeas ibi hoc breve. T. meipso apud Westmonast. 14 die Jun. anno regni nostri 18 (*q*).

(*q*) Ed. I. next issued writs to the sheriffs, requiring them to return two or three knights to parliament on the 8th of October, in the twenty-second year of his reign; and on

History and constitution of parliament, from 49 Hen. 3, to 7 Hen. 4.

Hitherto I have confined myself to the origin of knights of shires, our attention must now

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the day following other writs were issued, directing the return of two more knights for each county: and as the form of these writs is somewhat different from that of the 18th Ed. I, I shall insert them in this note.

" Rex vic. Northumbr. salutem. Quia cum comitibus, baronibus, et ceteris magnatibus de regno nostro super quibusdam negotiis arduis nos et idem regnum nostrum contingentibus in crast. Sancti Martini prox. futur. apud Westm. colloquium habere volumus et tractatum, Tibi precipimus quod eligi facias duos milites de discretioribus, et ad laborandum potentioribus de com. predicto et eos ad nos usque Westm. venire facias. Ita quod sint ibi in crastino predicto, cum plena potestate pro se et tota communitate, com. predicti, ad consulend. et consentiend. pro se et communitate illa hiis quæ comites, barones et proceres predicti concorditer ordinaverint in premissis. Et ita quod pro defectu potestatis hujusmodi, idem negotium infectum non remaneat, et habeas ibi hoc breve. Teste Rege apud Westm. 8 die Octobris."

" Rex vic. Northumb. salutem. Cum nuper tibi preciperimus quod duos milites de discretioribus et ad laborandum potentioribus ejusd. comitat. de consensu ejusdem eligi, et eos ad nos usque Westm. in crast. Sancti Martini prox. futuro, cum plena potestate pro se et totâ communitate ejusd. com. venire faceres, ad consulend. et consentiend. pro se et communitate illa hiis quæ comites, barones, et proceres de regno nostro in dicto crastino ordinabunt. Tibi precipimus firmiter injungentes *quod præter illos duos milites eligi facias alios duos milites* legales et ad laborandum potentes et eos unà cum dictis duobus militibus usque Westm. venire facias, ita quod in dicto crastino sint ibidem ad audiend. et faciend. quod eis ibidem plenius injungemus. Et hoc nullo modo omittas. Et habeas ibi hoc breve. Teste Rege apud Westm. 9 die Octobris."

be directed to that of burgess representation. This inquiry could not well have been introduced before we arrived at the 49th of Hen. III, as previous to that period history affords no certain information on this subject.

History and constitution of parliament, from 49 Hen. 3, to 7 Hen. 4.

Some have supposed that the elective franchises of the burgesses are prescriptive, others that they are imparted by charter: some, that it depended on the will and discretion of the sheriff for each county, what places should be required to return representatives; others, that burgess representation had its origin in the increasing wealth and importance of the trading part of the community. It is however improbable, if such rights existed, and were exercised prior to the 49th Hen. III, that no record of them should be found, either among the muniments of ancient boroughs, or in the chronicles or laws of those times.

Origin of burgess representation.

The distinction between the knights of shires, and the representatives of boroughs and cities, was at first very great, as the former continued to sit and act with the greater barons till the reign of Ed. III. This is consistent with their distinct and independent origin, but totally inconsistent with these two classes of representatives being descended from one common stock, or having always acted together as members of the same body. Indeed the duties of the two bodies were then considered so perfectly distinct, that when the affairs of general importance were disposed of, the knights were permitted to depart, whilst the

Hen. Hist. Eng v. 4. p. 390-2

History and constitution of parliament, from 49 Hen. 3, to 7 Hen. 4.

burgesses were detained to legislate on those matters which more particularly regarded trade and commerce.

Hen. Hist. Eng. v. 4. p. 394. 1 Parl. Hist. p. 313.

That none should be taxed except by their own consent, or at least by that of their representatives, is a principle which history shows to have been long recognized in our political institutions; and is one which throws considerable light upon the present point, as it affords a satisfactory reason for the introduction of the representatives of cities and boroughs, about this period, into the national council.

Before the Conquest, and during several of the subsequent reigns, the great mass of the population of England was in a state of villenage; and many even of those who were land-owners held their possessions by base tenures, particularly in the cities and towns, which then for the most part were the property of the crown, or of some superior lord. The consequence of which was, that when the great council enabled the crown to levy a tax, whilst the clergy in their synod taxed themselves, and the barons and knights those of their body, the king, or other superior lords of the different towns or cities, individually assessed upon each the quota which they should contribute. But as between the reigns of Hen. I. and Hen. III. most of the towns and cities had received charters of enfranchisement, held on the payment of a settled fee-farm rent, the inhabitants were no longer liable to be taxed in this manner; an ex-

Mad. Firm. Burg. p. 4.

Blaseres, 320.

History and constitution of parliament, from 49 Hen. 3. to 7 Hen. 4.

emption which would render it necessary to require this body of the people also to send representatives to parliament, in order to obtain from them their proportionate share towards the national expenditure. This derivation of burgess representation (r) is consistent with the fact, that when a subsidy was granted, whilst the barons and knights taxed those of their body in one proportion, a higher amount was imposed upon the inhabitants of towns and cities by their representatives.

Hen. Hist. Eng. vol. 4, 391. Maseres, 321.

Thus, in the same manner as we have seen the

(r) This derivation of 'burgess representation' is supported by the following statutes of the 25 & 34 Ed. I. "Moreover we have granted for us and our heirs, as well to archbishops, bishops, abbotts, priors, and other folk of holy church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks nor prizes, but by the *common assent of the realm*, and for the common profit thereof, saving the ancient aids and prizes due and accustomed." 25 Ed. I. c. 6.

"No tallage or aid shall be taken or levied by us, or our heirs, in our realm, without the goodwill and assent of archbishops, bishops, earls, barons, knights, *burgesses*, and other freemen of the land." 34 Ed. I. stat. 4. c. 1.

These statutes, if compared with that clause in Magna Charta, providing in what manner the greater and lesser barons, &c. should be summoned to the great council, when an aid or escuage was required, will show that a great change had taken place in the constitution of parliament; and that in each case the right of taxation and representation were considered as co-extensive.

History and constitution of parliament, from 49 Hen. 3, to 7 Hen. 4.

subdivision of the free land and the consequent increase of the freeholders, or tenants in capite, give rise to the representative system in the election of the knights of shires; so did the acquisition of wealth, and the extension of liberty, occasion that of burgess representation.

1295.

The 23 Ed. I. may be taken as a date from which both classes of representatives have been uninterruptedly returned to parliament (*s*). The writs were then issued in the following form:

Writ of 23 Ed. 1, cl. 23; Ed. 1, m. 4, dors.

"Rex vicecomiti Northampton salutem. Quia cum comitibus, baronibus et ceteris proceribus regni nostri super remediis contra pericula quæ eidem regno hiis diebus imminent providendum, colloquium habere volumus et tractatum, per quod eis mandavimus quod sint ad nos die dominicæ proximo post festum Sancti Martini in hyeme proximo futurum, apud Westminster ad tractandum, ordinandum et faciendum, qualiter sit hujusmodi pericula obviandum, tibi precipimus firmiter injungentes quod de comitatu prædicto duos milites, *et de qualibet civitate ejusdem comitatus duos cives et de quolibet burgo duos burgenses* de discretioribus et ad laborandum potentioribus, sine dilatione *eligi* et eos ad nos ad prædictos

(*s*) The growing importance of the trading part of the community appears to have been felt in France as well as in England about this period, as it is the opinion of a great majority of the French historians, "that Philip the Fair first introduced the representatives of towns into the assembly of the states-general in 1302." Hal. Mid. Ages, vol. 1, p. 253.

diem et locum venire facias, ita quod dicti milites pleniam et sufficientem potestatem pro se et communitate comitatus prædicti, et dicti cives et burgenses pro se et communitate civitatum et burgorum prædictorum, divisim ab ipsis, tunc ibidem habeant ad faciendum quod tunc de communi consilio ordinabitur in premissis, ita quod pro defectu hujusmodi potestatis negotium prædictum infectum non remaneat quoque modo, et habeas ibi nomina militum, civium, burgensium, et hoc breve. Teste rege apud Cantuarium, tertio die Octobris."

History and constitution of parliament, from 49 Hen. 3. to 7 Hen. 4.

Although from this period the representative system has continued uninterrupted, as yet neither the times of meeting, nor the qualifications of the electors or the elected, formed the subject of any legislative enactments.

It was an ancient prerogative of the crown to convene the great council by summons whenever its advice and assistance was required, even whilst it met at the three great festivals of the church *de more*. Whether these customary meetings continued to be observed may be doubtful; but it is certain that the crown frequently called the great council or parliament together by summons, as occasion required. But as the constitution of parliament became more settled, this body became more careful of its privileges; and in the 4th of Ed. III. an act passed, by which "it is accorded, that a parliament shall be holden every year once, and more often if need be."

4 Ed. 3. c. 14.

History and constitution of parliament, from 49 Hen. 3. to 7 Hen. 4.

By this statute the right of meeting frequently was alone secured; but what places were required to send representatives to parliament was somewhat uncertain: a discretionary power having been apparently exercised towards the cities and towns in this respect. Whether this discretion was exercised by the crown or the sheriff has been doubted, though most probably by the latter (*t*).

2 Prynne, Brev. Parl. v. 3. p. 230.

(*t*) Prynne was of opinion that this was the case previous to the statutes of 5 R. II. c. 4; 1 H. V. c. 1, & 23 H. VI. c. 25. Brev. Parl. v. 3, p. 238.

In the following passage this laborious author adverts to the various opinions and authorities upon this point, and gives the grounds upon which he formed his own opinion.

"It is the opinion, not only of the compiler of that absurd and grosse late [1] imposture (not antient record or treatise), intituled, Modus tenendi Parliamentum (much magnified by [2] Sir Edward Cook beyond all bounds of truth and modesty), but also of our learned and judicious antiquary [3], Mr. William Lambard, and others of great note [4], That the true original title and right of all our antient cities, burroughs, electing and sending burgesses and citizens to our parliaments, is prescription time out of mind, long before the Conquest; it being a privilege actually and of right enjoyed in Edward the Confessor's time, or before, and exercised ever since. And indeed [5] Littleton and Sir Edward Cook seem to countenance or justify their opinions, which I have [6] elsewhere fully refuted and proved a grosse mistake, by histories and records beyond all contradiction. Others conceive that the power of burroughs or cities electing, sending burgesses and citizens to our parliaments, proceeded originally from some [7] antient charters of our kings heretofore granted to them, to which opinion I once inclined. But the consideration of the new discovery of the old original

[1] See Selden's Tit. Hon. part 2, p. 603. 738 to 745; my Plea for the Lords, p. 26.

[2] 4 Inst. p. 12; 1 Inst. p. 69. 110; 2 Inst. p. 7, 8; Pref. to 9th Rep.

[3] Archaion, p. 257-8-9.

[4] In their Treatises of the Antiquities of the Parl. of Engl. published by Mr. John Dodridge.

[5] Sec. 164; Cook's 1 Inst. f. 109.

[6] 2d part of my brief Register and Survey, p. 173-4-5; Plea for the Lords, from 164 to 214.

[7] Hobart's Rep. p. 14, 15.

Having traced the history of parliament to that period when the representative of both burgess

History and constitution of parliament, from 49 Hen. 3, to 7 Hen. 4.

retornes of writs for electing knights, citizens and burgesses, I found in Cæsar's Chapel, hath rectified my former mistake herein; and abundantly satisfied me, that neither bare antient custome or prescription before or since the Conquest, nor our king's charters, but the sheriffs of each counties precepts, and retornes of elections of burgesses and citizens for such burroughs and cities as they thought meet by authority and power granted to them in and by this general clause in the king's writs of summons of parliaments, issued to sheriffs of every county before every parliament, enjoining them in these words: "Tibi præcipimus firmiter injungentes, quod de comitatu predicto duos milites, et de qualibet civitate ejusdem comitatus duos cives, et de quolibet burgo duos burgenses, de discretioribus et ad laborandum potentioribus, &c. sine dilatione elgi, et eos ad nos ad dictos diem et locum venire facias; ita quod, &c. dicti cives et burgenses pro se et pro communitate civitatum et burgorem prædictorum divisim ab ipsis (militibus comitatus) habeant ad faciendum et consentiendum hiis quæ tunc de communi consilio contigerit ordinari, &c." By virtue of which general indefinite clauses, de qualibet civitate, et quolibet burgo, &c. used in all writs of summons ever since an. 23 E. I. m. 4, dors. without designing what particular cities or boroughs by name within each county, the sheriffs should cause to elect or send two citizens or two burgesses thus empowered, but leaving it to each sheriff's liberty and discretion to send the writ directed to him, or precept grounded on it, to what cities and burroughs he pleased. Thereupon every sheriff used a kind of arbitrary power in the execution of this general clause, according as his judgment directed, or his affections of favor, partiality, malice, or the solicitations of any private burroughs to him, or of competitors for citizens or burgesses places within his county, swayed him. This is most apparent, by some sheriffs in several counties returning

History and constitution of parliament, from 49 Hen. 3, to 7 Hen. 4.

and freeholder formed undoubtedly a recognized member of that assembly, I do not deem it necessary to inquire further into the burgess rights, but shall confine my attention to those of the freeholder, which became the object of an act of parliament as early as the 7th of Hen. IV. But before I proceed to consider this and the succeeding statutes upon this subject, I would observe, that although the representative system was then permanently established by usage, and recognized by a formal resolution of parliament, and the frequent meetings of that body secured by statute, still no local rights had become permanently vested, either in the proprietors or inhabitants of any particular districts; but that the constitution of parliament had altered and continued to alter, and adapt itself alike to the necessities of the times, and the capacities of the people.

The 7 Hen. IV. c. 15. is the first statute which regulates the elections of the knights for shires; and as the preamble shows the inconvenience

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more burroughs and burgesses than their predecessors, others fewer; some omitting those burroughs retorned by their predecessors, others causing elections and retornes to be made for such new burroughs which never elected or sent any before nor after their shrievalties, as is evident by the retornes annis 26, 30 E. I. & 34 E. III. for Devon; anno 26 E. I. for Yorkshire; anno 33 E. III. for Hereford; anno 33 E. I. for Oxfordshire; anno 28 E. I. for the county of Southampton; annis 33 & 34 E. III. for Somerset; annis 25, 27 & 28 H. VI. for Wilts; to omit others of 28 E. I."

Prynne, Brev. Parl. v. 3. p. 230.

which was then felt for want of some settled system, I have thought the insertion of it the best comment upon the manner in which such elections were then made.

History and constitution of parliament, from 49 Hen. 3, to 7 Hen. 4.

"Item, our lord the king, at the grievous complaint of his commons in this present parliament, of the undue election of the knights of counties for the parliament, which be sometime made of affection of sheriffs, and otherwise against the form of the writs directed to the sheriff, to the great slander of the counties and hinderance of the business of the commonalty in the said county; our sovereign lord the king willing therein to provide remedy, by the assent of the lords spiritual, temporal, and the commons in this present parliament assembled, hath ordained and established, That from henceforth the election of such knights shall be made in the form as followeth; (that is to say) at the next county to be holden after the delivery of the writ of the parliament, proclamation shall be made in the full county of the day and place of the parliament, *and that all they that be there present, as well suitors duly summoned for the same cause as other* (*u*), shall

7 Hen. 4, c. 15.

(*u*) Who were included in the description, "all they that be there present, as well suitors duly summoned for the same cause as other," has been disputed; some writers contending that by the word "*other*" all persons whatever who were present were intended, and others that none but freeholders. Prynne has supported the first opinion, 3 Reg. 187; and Lord Holt the second, Ashby *v.* White, 2 Lord Ray. 950;

History of parliament, from 7 Hen. 4, to 10 Hen. 6.

attend to the election of the knights for the parliament, and then in the full county they shall proceed to the election freely and indifferently, notwithstanding any request or commandmant to the contrary; and after that they be chosen, the names of the persons so chosen (be they present or absent) shall be written in an indenture under the seals of all them that did choose them, and tacked to the same writ of the parliament; which indenture so sealed and tacked shall be holden for the sheriff's return of the said writ, touching the knights of the shires. And in the writs of the parliament to be made hereafter, this clause shall be put,—' Et electionem tuam in pleno comitatu tuo factam distincte et aperte, sub sigillo tuo et sigillo eorum qui electioni illi interfuerunt, nobis in cancellaria nostra ad diem et locum in brevi contentos certifices indilate."

It will be observed, that this statute merely directs the manner in which the elections of the knights of shires should be conducted for the

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et vide Whitlocke, v. 2, p. 90; Heywood Co. Elect. 56; Hallam, v. 3. from p. 23 to 29. If the more extended construction be put upon the word *other*, the 8th Hen. VI. c. 7. must indeed have effected a great change in our constitution, as then, instead of merely regulating who out of a certain class should be entitled to elect, it entirely deprived the body of the people of this right, and transferred it for the first time exclusively to the land-owners: a conclusion which receives little support from the history of those times.

future, but does not define either who were eligible as such, or who entitled to elect(*x*). The first statute upon these points is the 1 Hen. V. c. 1, which requires both the electors and the elected to be residents within the county, as follows:

History of parliament, from 7 Hen. 4, to 10 Hen. 6.

"That the knights of the shires, which from henceforth shall be chosen in every shire, be not chosen unless they be resident within the shire where they shall be chosen the day of the date of the writ of the summons of the parliament; and that the knights and esquires, and others which shall be choosers of those knights of the shires, be also resident within the same shires in manner aforesaid (*y*)."

1 Hen. 5. c. 1.

Of these residents, who were electors at this time does not seem to have been well settled. Prynne notices several returns for Yorkshire between the 7 Hen. IV. and 8 Hen. VI., which are sealed by a few persons (styling themselves the attornies of some peers and ladies), who alone appear to have returned the knights for that shire. But the preamble to the 8 Hen. VI. c. 7. makes mention of the great and excessive number of

3 Reg. 152.

(*x*) The statute of 11 H. IV. c. 1. imposes a penalty of 100 *l.* on any sheriff who shall make a return contrary to this act of parliament, and deprives all knights who should be unduly returned of their wages. See also 23 Hen. VI. c. 14.

(*y*) This statute also requires, that the representatives of cities and boroughs should be resident in and free of the same.

History of parliament, from 7 Hen. 4, to 10 Hen. 6.

people who of late pretended to possess the right of election.

By the 8 Hen. VI. c. 7. a certain qualification was required of such electors, which continuing the basis of the right as now enjoyed, I shall insert the statute at length.

8 Hen. 6. c. 7.

"Item, whereas the elections of knights of the shires to come to the parliaments of our lord the king, in many counties of the realm of England, have now of late been made by very great, outrageous, and excessive number of people dwelling within the same counties of the realm of England, of the which most part was of people of small substance and of no value; whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling within the same counties, whereby manslaughters, riots, batteries, and divisions among the gentlemen and other people of the same counties, shall very likely rise and be, unless convenient and due remedy be provided in this behalf; our lord the king considering the premises, hath provided, ordained and established by authority of this present parliament, That *the knights of the shires to be chosen within the same realm of England, to come to the parliaments of our lord the king hereafter to be holden*, shall be chosen in every county of the realm of England by people dwelling and resident in the same counties, whereof every one of them shall have free land or tenement to the value of forty shillings by the year at the least above all charges; and

History of parliament, from 7 Hen. 4, to 10 Hen. 6.

that they which shall be so chose shall be dwelling and resident within the same counties; and such as have the greatest number of them that may expend forty shillings by year and above, as afore is said, shall be returned by the sheriffs of every county knights for the parliament, by indentures sealed between the said sheriffs and the said choosers so to be made. And every sheriff of the realm of England shall have power by the said authority, to examine upon the Evangelists every such chooser, how much he may expend by the year; and if any sheriff return knights to come to the parliament contrary to the said ordinance, the justices of assizes in their sessions of assizes shall have power, by the authority aforesaid, thereof to inquire; and if by inquest the same be found before the justices, and the sheriff thereof be duly attainted, that then the said sheriff shall incur the pain of an 100*l.* to be paid to our lord the king, and also that he have imprisonment by a year, without being let to bail or mainprize; and that the knights for the parliament, returned contrary to the said ordinance, shall lose their wages: Provided always, that he which cannot expend forty shillings by year, as afore is said, shall in nowise be chooser of the knights for the parliament; and that in every writ which shall hereafter go forth to the sheriffs to choose knights for the parliament, mention be made of the said ordinances."

8 Hen. 6. c. 7.

This statute, although it fixed the amount of

History of parliament, from 7 Hen. 4, to 10 Hen. 6.

freehold interest which should thenceforth entitle persons to be choosers of the knights of shires, and likewise required the electors to be resident, omitted to direct that all such freeholds should be situate within the county for which election should be made. Consequently, in the tenth year of the same king an act passed for this purpose, which, reciting the 8th Hen. VI. c. 7, and that no "express mention" was therein made, "that every man that shall be chooser of any such knights, shall have freehold to the value of forty shillings at the least above all charges, within the same county where such choosers with other shall make such election, or elsewhere;" enacts as follows, "And therefore our lord the king willing to make plain declaration of the said statute, by the advice and assent aforesaid, and at the special request of the said commons, hath ordained, That the knights of all counties within the said realm, *to be chosen to come to parliaments hereafter to be holden*, shall be chosen in every county by people dwelling and resient within the same, *whereof every man shall have freehold to the value of* xl*s. by the year, at the least, above all charges within the same county where any such chooser will meddle of any such election.*"

10 Hen. 6, c. 2.

These are the most important statutes upon this subject, as the value and locality of the freehold required thereby have continued the substantial criteria of the right to elect, although some additions and alterations have been subsequently made

in other particulars. It will not, however, be necessary to pursue this part of the inquiry further than to show to what extent these enactments remain in force; because, having shown a mode of election, and a qualification for electors, established by act of parliament, it follows that all claims of prescriptive or original right must arise anterior to this period.

History of parliament subsequent to 10 Hen. 6.

We have seen, that the stat. 1st Hen. V. c. 1. required both the elector and the elected to be resident within the county; and likewise, that the 8th & 10th Hen. VI. c. 7. & 2, made residence an essential part of the qualification of the elector; and in the 23d Hen. VI. another act passed enforcing the observance of these provisions. But the increasing diffusion of wealth, and the consequent subdivision of landed property, soon rendered the provisions of these statutes respecting residence, ill-suited to the state of society; so that, in process of time, they were disregarded, and being, in the language of 14th G. III. c. 58. considered "unnecessary" and "obsolete," were by that statute repealed. But although the residence of the electors and elected has been dispensed with, the provisions of the 10th Hen. VI. respecting the locality of the freehold are still in force, with this addition, that a freeholder may now be compelled to take the following oath before he is permitted to poll:

23 Hen. 6, c. 14.

"You shall swear, that you are a freeholder in

18 G. 2. c. 18.

History of parliament subsequent to 10 Hen. 6.

the county of ———, and have a freehold estate consisting of ———, lying and being at ———, in the county of ———, of the clear yearly value of forty shillings," &c. &c. thus enforcing the observance of that statute in the most unequivocal manner.

Land-tax Acts.

It is not necessary to inquire into the regulations imposed by the land-tax acts, as they cannot be considered to affect the question under consideration, having been introduced to check the splitting of freeholds and the creation of fraudulent votes; as affording a criterion of value, and not as a test of locality.

History of parliament.

This inquiry into the early history of parliaments seems to afford reasonable grounds for the following conclusions:

1st. That the right to a seat in the great council was at first personal and appertinent to landed possessions.

2dly. That the knights for shires were introduced when the subdivision of those lands, (which by the nature of their tenure conferred seats in the great council), rendered the individual attendance of the proprietor inconvenient, if not impracticable.

3dly. That the mode in which the election of the knights for shires should be conducted, as well as the qualification which entitles the freeholder to elect, have been defined by different acts of parliament; of which the earlier statutes required

both the elector and elected to reside, and the latter the freehold to be situate, within the county for which the election is to be made.

History of parliament subsequent to 10 Hen. 6.

4thly. That the increase of wealth, and the extension of liberty among the inhabitants of cities and towns, caused the admission of representatives of those bodies into the great council.

5thly. That although throughout our early history we see the right of the people to a share in their own government recognized as a principle of the constitution, still we find the mode in which it has been enjoyed varying with the state of society, and the manner in which it is to be exercised by the freeholder controlled and regulated by act of parliament.

Consequently it is clear, that no person is now entitled to vote for the knight of any shire who does not, at the time of election, possess a freehold interest within the same county of the annual value of forty shillings. For the 10th Hen. VI. c. 2. cannot be considered as unalterably annexing a vote to every freehold of forty shillings per annum then situate within each county, but as restricting the right *for the time to come*, to such freeholders only who, at the time of any subsequent election, should possess a freehold of that value within the county for which he might tender to vote.

Vide ante, 10 Hen. 6. c. 2. p. 32.

The next subject to be inquired into, is the division of England into counties, the time when and the mode in which that has been effected.

Origin of Counties.

Origin of Counties.

It is probable that England was divided into districts by the Britons (*w*) for purposes of local government, although it can hardly be supposed that the boundaries of those districts correspond exactly with any of the present counties, or that such divisions were then denominated either shires or counties (*x*).

The various changes which this kingdom has sustained, from the division into provinces under the Romans, to that of distinct kingdoms by the Saxons, together with the lapse of time which has ensued, sufficiently account why no certain knowledge can now be obtained of the original nature

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(*w*) "Sixthly, that this realm was divided into shires and counties, and those shires into cities, burroughes and townes, by the Brittaines, so that Alfred's division of shires and counties was but a renovation or more exact description of the same." 1 Inst. p. 168, n. *a*.

(*x*) The word 'Shire' being of Saxon, and 'County' of Norman derivation, it follows that each must have been subsequently adopted as part of our national nomenclature. Nathaniel Bacon in his discourse on the government of England, speaking of that of the Saxons, says, "they found England already divided into several parts, called *comitatus* or *counties*, from the word *comes*, that signifies a companion; and the counties thence called are nothing but societies or associations in public charge or service," p. 65. "Shire (says Blackstone) is a Saxon word, signifying a division; but a county, *comitatus*, is plainly derived from *comes*, the count of the Franks; that is, the earl or alderman (as the Saxons called him) of the shire to whom the government of it was intrusted." 1 Com. p. 116; *et vide* Fortescue, c. 42; Spel. Gloss.

Origin of Counties.

and extent of these subdivisions (*y*). Some persons indeed have supposed that the division of England into counties originated with Alfred; this opinion however has long been abandoned by the well-informed, and the merit of having reduced it into greater order is now alone ascribed to him.

"Ingulphus writes, that king Alfred first of all altered the countreys and provinces of all England into counties; butt, (saith Sir Roger Owen,) you must understand Ingulphus meaning to be, that the heptarchy being determined, king Alfred did more perfectly or absolutely reduce these countryes: butt that they were more antient than his time, appears by many records cited by this author in that chapter, and by the comment upon Littleton, where he cites the laws of Edward the Confessor, and among other notes upon them says, that this realm was divided into shires and counties, and those shires into citties, burroughs and townes by the Brittains; so that (saith he) king Alfred's division of shires and counties was butt

MS. part 2. p. 339.

1 Inst. p. 108 in notis.

(*y*) "The just time of that division appears not; yet it cannot be doubted, that ever since any government was established here, some subdivision was of the kingdom into such parts as might receive several governors or guardians. No doubt, neither, but that time hath variously altered and induced new shapes into that divison, which yet always was fit enough to support the dignities of several ealdormen that had more or fewer parts of the division, according to the pleasure of the kings that created them." Selden. Tit. Hon. p. 649.

Whitelocke's Notes on the King's Writ, v. 1. p. 492.

a renovation or more exact description of the same."

Counties, how made.

The formation, alteration and arrangement of those divisions now called shires or counties was, in all probability, originally a branch of the royal prerogative, and certainly is one that has been frequently exercised, as will be seen when we investigate the history of the corporate counties. These divisions were probably instituted, or at least as far back as history informs us were used, for purposes of local government; and their courts or gemots for the execution, and not the formation of laws. This branch of government depended more exclusively upon the personal will of the monarch, during the earlier periods of our history, than it has in later times: but even now, as then, the appointment of the commander or governor of a county is an act of prerogative; for the ealdorman of the Saxons, the comes of the Normans, and the lord-lieutenant of the present day, are in effect the same officer, and appointed by the same authority. "A countey (says Whitelocke) being so much land as an earle was formerly commander of, thence it was that counties are not equally divided, and some partes thereof, as members cutt off from their bodyes, lye remote: bicause shires were first levelled out, not by line, or measure of land from land, but by the resorte of certain people to a peculiar court or countey where justice was administered. Butt shires being more equally divided, some noblemen or gentlemen having small

V. 1, p. 493.

parcells or mannours in one countey adjoyning to another, [such parcells or mannours] by usurpation (or sufferance of resorting of the inhabitants or dwellers thereof, being their tenants, unto the courts of the countey where the nobleman dwelt,) came to be accounted parcell of the countey where the nobleman or gentleman did dwell (z)."

Counties, how made.

This mode of accounting for the great difference in the size, as well as for the remote and detached parts of counties, seems highly probable, and is consistent with the state of society in former days; whilst their irregularity in shape, and inequality in size, contradict the supposition that they were formed upon one great and general plan. It is also consistent with the language of the stat. 7th Hen. IV. c. 15, which seems to make attendance at the county court the criterion of belonging to the county. It therefore is probable, that, in those days, the extent and boundaries of counties were not so absolutely and determinately fixed as in more modern times; but that they

(z) The following observation of Abbott, C. J. in the late case of Johnson v. Dealtry and others, is consistent with this opinion.—"From time immemorial Craike has been parcel of the county of Durham; whether it became so at the time of the original separation of the land of the two counties of Durham and York, or whether having been originally part of the county of York, it was made part of Durham when the latter became a county palatine, *in consequence of being parcel of the possessions of the bishop of Durham*, we do not know." 3 Barn. & Ald. Rep. 81.

Counties, how made.

in some measure varied, and were controlled as to extent, by the property or influence of individuals residing near, and resorting to their courts. Neither did Alfred complete the division of England into counties, however he may have improved the arrangement of some part, as the earldom of Northumberland remained entire till the reign of Edward the Confessor, by whom it was divided into seven counties (*a*). Thus far the subdivision or alteration of the limits of counties appears to have been effected by the authority of the crown. The Welsh counties, however, stand upon a different footing, having been created by act of parliament. This took place in the reign of Hen. VIII, when the marches of Wales were divided, part being annexed to the bordering counties of England, and part created into distinct counties. Many of the laws, rights, and privileges of England were extended to Wales by this statute; and, amongst others, that of returning members to parliament, which may account for the interposition of parliament in this instance.

27 Hen. 8. c. 26.

(*a*) "The earldom of Northumberland was not divided into counties till the time of Edward the Confessor, at which time this earldom extending from sea to sea, and from the Humber to the Tweed, was divided into seven shires; and which, in Domesday-book, are described as Everwickshire, *i. e.* Yorkshire, Richmondshire, (which I suppose is now part of Yorkshire,) Lancashire and Durham, (there styled Copland,) Westmorland, Northumberland and Cumberland." Drake's Hist. of York, p. 85.

Counties, how made.

Hitherto I have considered the division of England into counties generally; it, however, should be observed, that they may be divided into three classes, namely, counties, counties corporate, and counties palatine; the boundaries of which may depend upon prescription, the act of the crown, or that of parliament.

Counties corporate.

All the corporate counties, (unless it be London), have their origin in a charter from the crown; an act of prerogative which has been exercised, in various instances, between the 47th Ed. III. and the 4th G. III. Haverfordwest is also a county by act of parliament; but it was first made a distinct county by a charter of Ed. IV. and was subsequently enlarged by one of Jac. I. And it is worthy of observation, that the section of the act of parliament immediately succeeding that which makes Haverfordwest a county, provides, that the enactment of the preceding section "shall stand and endure, but only at the king's majesty's will and pleasure, and none otherwise."

34 & 35 Hen. 8. c. 26. s. 124.

Vide post. tit. Haverfordwest.

Vide post. tit. London.

London seems to be a county by prescription; for, instead of being separated from, or carved out of any of the adjacent counties in later times, like other corporate counties, it was a county of itself at the time of the Conquest, to which Middlesex was annexed by a charter of Hen. I. in consideration of a fee-farm rent of 300 *l.* per annum.

Counties palatine.

The creation of a county palatine is of a different nature, as it consisted, not in the alteration of the limits of any ancient county, but in transferring the prerogatives of the crown to the earl, count, or lieutenant of a county, by granting him juria regalia therein. There are three counties palatine; namely, Cheshire, Durham and Lancashire(*b*): Of these, the two first are counties palatine by prescription, and the last, by a charter granted by Ed. III. in the 50th year of his reign. Pembrokeshire also was a county palatine previous to the 27th Hen. VIII. when its jurisdiction, as such, was taken away by act of parliament. In the

4 Inst. 211. 216. 204.

Ib. 221.

(*b*) The franchise of Hexamshire "was sometime parcell of the possessions of the archbishop of York, and claimed by him to be a county palatine. At the parliament holden in 2 Hen. V. it is resolved that Hexamshire was a franchise, where the king's writ went not; and in the stat. 33 Hen. VIII. it is named a county palatine: but at the parliament holden in anno 14 Eliz. it was seriously examined, and in the end four conclusions were enacted by authority of parliament:—1. That whiles it was in the hands of the archbishop it was tearmed and named a county palatine, where in right of proof there was none such. 2. That it is within, and parcell of the county of Northumberland. 3. That all pleas of the crown, and suits between party and party, shall receive like trial, &c. as the rest of the subjects of Northumberland ought to have. 4. That the sheriff and other officers of the county of Northumberland may execute his or their office, &c. within Hexam and Hexamshire.—So as whatsoever it was before 14 Eliz. it is now no county palatine or franchise royall." 4 Inst. 222.

Counties palatine.

Year-book, 32d Hen. VI. fol. 13, it is laid down, that "the king may make a county palatine by his letters patent, without parliament:" and the charter by which Ed. III. granted the county palatine of Pembroke to Laurence de Hastings appears to have been so granted; nevertheless, that by which the same king made Lancashire a county palatine, purports to be granted "de assensu prælatorum et procerum in instanti parliamento nostro, apud Westm. convocat' existen." Cheshire and Durham being counties palatine by prescription, it does not appear, with certainty, by what authority they were so created; but considering the nature of the franchise, it must, in all probability, have been conferred by charter from the crown.

4 Inst. 221.

Effect of the alteration of counties on the elective franchise.

The last point to be considered is, whether the alteration of the limits of counties, by royal charter, can in anywise affect the elective franchise of the freeholder. This question will be best illustrated by the investigation I propose to make into the charters and usages of the different corporate counties, as the parliamentary privileges of Wales, and the counties palatine, stand upon a perfectly different footing. Cheshire and Durham (c) have both been enabled to return members

34 & 35 Hen. 8. c. 15; et vide Chester post. 25 Car. 2. c. 9.

(c) The inhabitants of this county petitioned parliament in 1614 upon this subject, and several attempts were subsequently made to bring in a bill for this purpose, but without effect till 1672. *Vide* Journals; and Carew, p. 228 to 231.

Effect of the alteration of counties on the elective franchise.

to parliament by statute, in the same manner as the Welsh counties. Lancashire, having been made a county palatine at a later period, had previously sent members to parliament, and is required by the charter of Ed. III. to continue to do so (*d*). These therefore, with the exception of Lancashire, are instances in which peculiar jurisdictions have been admitted to a participation in the privileges of the kingdom at large, and not where an alteration in the nominal limits of a part of the kingdom, already in the possession of those privileges, alone has been effected. However, I would observe, that all the charters, creating corporate counties, are silent as to the elective franchise of the freeholders of the new-made counties. In the cases of Bristol and Gloucester it certainly has been provided by charter, that those places shall not be called upon to return more members to parliament than they previously did; but that the burgesses for the town should answer as knights for the county also. Some charters, likewise, are exceptive; and in such cases the right of voting for the parent county has been retained. In some

Vid. infra.

Willis mentions that this county sent members to parliament during the Commonwealth, in 1654 & 6. Parl. Red. v. 2, 510.

(*d*) "Et est intentiones nostræ, quod idem dux ad mandata nostra et heredum nostrorum ad parliament. et consilia nostra duos milites pro communitate comitatus prædict. et duos burgenses pro quolibet burgo ejusdem comitatus," &c. 4 Inst. 204; Carew, 312.

instances, also, the freeholders vote for the town members, and in others not at all; but in each it will be found, that the particular usage is dependant on custom, and does not originate in any express enactment of the legislature, or the provisions of the charter of separation.

Effect of the alteration of counties on the elective franchise.

It therefore appears that counties, both corporate and others, have been created and divided without any reference to the parliamentary franchises of the freeholders, and for perfectly different purposes; and that the gain or loss of these rights in particular districts, must depend upon the application of the statutes, which govern the exercise of those rights generally, to the peculiar circumstances of each case.

INQUIRY

INTO

THE ELECTIVE FRANCHISE

OF THE

FREEHOLDERS, &c.

OF THE

CORPORATE COUNTIES,

&c.

WHILST inquiring into the origin of Counties in the Introduction, I thought it sufficient to observe, that, with the exception perhaps of London, all the corporate counties had their origin in royal charters. I now propose to enter more minutely into an examination of the history of these counties, the charters by which they have been created, and the effect produced by such charters upon the elective rights of the freeholders in each.

The power of the crown to make a county by charter is fully recognized in the following passages:

"The king may, by his charter, erect a citty into a county; and judge Jones affirmed, that it

was the resolution of all the judges of England and Ireland, that the king by patent only may take from one county and adde to another; and so he doth whensoever he makes any citty a county."

Whitelocke, v. 1, p. 493.

"There are also counties corporate, which are certain cities and towns, some with more, some with less territory annexed to them; to which, out of special grace and favour, the kings of England have granted to be counties of themselves, and not to be comprized in any other county, but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein."

Bl. Com. v. 1, p. 119.

The earliest charter I have met with of this nature is that of the 47th of Ed. III, by which Bristol was made a distinct county; and the latest, containing an original grant, that of the 19th of Jac. I, conferring a similar favour on the city of Worcester. Between these periods, and subsequently, many charters of confirmation have been granted to the different corporate counties, recognizing them as such in express terms, and one even as late as the 4th of Geo. III.

Vide post. tit. Carmarthen.

In the case of Bristol, and several other instances, these charters have been confirmed by parliament, and Haverfordwest, although a county by charter, was made one by act of parliament also. But notwithstanding the sanction of parliament has been superadded in a few instances to

the grant of the crown, in most the privileges of these civic counties depend upon charter alone.

It will not be disputed in the present day, that the crown, by virtue of its prerogative, had the power to grant charters of this nature, although there may be some difference of opinion as to the purposes for which they were granted, and the effects which they produced. I therefore propose to notice a few cases, in which it has been held that the crown did possess the power to grant charters creating a particular district a distinct county, in part, or altogether; or, in other words, to grant absolute or exceptive charters: and further, that when a place was created a distinct county by charter absolutely, and without any reservation, it became a complete and perfect county.

It is a well-known legal principle, that the grants of the crown are only valid so far as they are consistent with law, and that the king cannot by charter dispense with the observance of the laws in favour of any body of persons; consequently, when any doubt arises, all charters should be so construed as to make them consistent with law.

The first instance in which I find any notice of this prerogative of the crown is in Mitton's case, 26 Eliz. In that case, Elizabeth had granted the office of clerk of the county-court for the county of Somerset to Mitton for life, and afterwards appointed Arthur Hopton, esq. sheriff of

Mitton's case, 4 Rep. 32.

the same county, who interrupted Mitton, and appointed a clerk of his own, upon which Mitton complained to the lords of the council, who referred the case to the two chief justices, and they, after many arguments, ("because the case concerned the validity of the queen's grant,") had conference with the other justices, who unanimously resolved, that the patent was void in law, for these, among other reasons, "That the office of a sheriff is an ancient office, which has had continuance long before the Conquest, and is an office of great trust and authority; for the king commits to him, *custodiam comitatûs*, the custody and guard of the county; and when the king appoints a sheriff *durante bene placito*, although he may determine his office at his pleasure, yet he cannot determine it in part, as in one town, or hundred, or any other part, nor abridge the sheriff of any thing incident or appurtenant to his office, for his office is entire, and so ought to continue in its entirety without any fraction or diminution, unless it be by act of parliament; *or that the king makes some town, &c. a county of itself, and appoints a sheriff, and all things incident to a sheriff, within the same town.*"

Mitton's case, 4 Rep. 33.

We next come to the resolution of the judges in the 35th of Eliz. upon the effect of the charter

Sherry v. Richardson, Popham, 16; S. C. Anderson, 291; Moore, 661 (a).

(a) This case is reported by Anderson as the case of the city of Gloucester, and by Moore without any title; *et vide post.* Sherry v. Richardson, tit. Gloucester.

granted by R. III. to the city of Gloucester. This charter made the city of Gloucester a county of itself, reserving to the judges of assize, the justices of the peace, and the sheriff of the county of Gloucester, the power of holding their respective courts within the county of the city, for the trial of offences, &c. arising in the county at large. Previous to the spring circuit of that year, doubts arose with some of the judges, whether, under this reservation, they had authority to try offences committed within the county of Gloucester, in the county of the city. The point was referred to all the judges, who held, that the king could not by charter authorize his officers to try matters in one county which arose in another, but that he had the power to make a county by itself, in part, or altogether; consequently, that this reservation must be construed as continuing the city of Gloucester part of the county of Gloucester for these purposes, although, in all other respects, a separate and distinct county.

In the 17th of Geo. III. a person accused of having committed perjury on the trial of a county cause, in the booth-hall of the county of the city of Gloucester, was tried before a jury of the county, and a special verdict being found, setting out the charter of R. III. &c. it was moved in arrest of judgment, that the trial ought to have been had before a jury of the county of the city. Upon this occasion also, the reservation in the charter of R. III. came under consideration, and

R. v. Gough, Doug. Rep. K.B. 791; et vide post. tit. Gloucester,

the foregoing resolution of the judges was referred to, and unanimously confirmed by the court. And in the recent case of Johnson *v.* Dealtry and others, both these cases are cited as authorities by Mr. Justice Holroyd (*b*).

3 B. & A. 87.

(*b*) The question in this case was, whether the inhabitants of Craike were liable to contribute to the county rates of the North Riding of Yorkshire. This district, although situate within the county of York, from time immemorial had been part of the county of Durham, yet had always contributed to the public burdens of the county of York. In the judgment of Mr. Justice Holroyd is the following passage :—

" Originally the district of Craike might have been (and I think it must be taken to have been) part of the North Riding itself. For particular purposes it might have been made part of the county of Durham, with the exception, however, of its liability to bear the burdens of the North Riding of Yorkshire. It is clear that it may, in point of law, have been so separated from the county of York, with a saving and exception of the rights of the inhabitants of the county out of which it is taken ; for in Sherry *v.* Richardson it is laid down, that as the king, by his letters patent, may make a county, and exempt this from any other county ; so may he, in the making of it, save and exempt to him and his successors, such part of the jurisdiction or privilege which the other county, out of which it is exempted, had in it before ; and in R. *v.* Gough it was expressly held, that the shire-hall of the city of Gloucester, which, by charter, was made a county of itself, is for the purpose of trying causes within the county of Gloucester."

In the 4th Inst. p. 219, Lord Coke observes, that " the town of Creke, in the county of York, holden of the bishop of Durham, &c. shall be impleaded in the county palatine

These authorities recognise the power of the crown to make counties by charter, in part, or altogether; consequently, it will be necessary to inquire to what extent each charter is operative. The difference will not be found to consist in the terms by which any place is made a distinct county, but in some reservation controlling that grant. As where a charter excepts the castle, town-hall, gaol, &c. from the authority of the sheriff of the corporate county, as in the case of Nottingham; or where it retains them for the use of the parent county, as in that of Gloucester; or reserves to the inhabitants all the privileges which they previously enjoyed, as in the letters patent by which Hen. VI. united the Ainsty to the county of the city of York.

Vide post. arguments for Pets. Rep. p. 8.; R. v. Inhabitants of Norwich, post.

It has been argued that these charters were operative for purposes of local government only.

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of Durham, and in no other place." Durham being a county palatine, many ineffectual attempts were made, between the years 1562 and 1672, to procure an act to enable it to return members to parliament. The bill brought in for this purpose in 1667 contained a proviso concerning the manor of Crete, in the county of Durham, which was agreed to, although the bill itself was lost by a majority of 65 to 60. *Vide* Journals, 26 Mar. 1667. Crete is not mentioned in the statute of 25 Car. II. which empowers the county of Durham to return members to parliament; but it is probable that the proviso of 1667, applied to the district noticed by Lord Coke, and which gave rise to the case above cited.

It is admitted that this was the object for which counties were first instituted. But it is contended, that many rights and liabilities of a different nature have subsequently become incident to these divisions of the kingdom, (amongst which are the statutable regulations respecting the right of election for counties,) and that there is no sufficient authority for supposing that a place, which has been made a distinct county by charter, ought to stand in this respect upon a different footing from any other county. On the contrary, the decision of the court of King's Bench, in the 5th G. I. (*c*),

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(*c*) "Dominus Rex vers. Inhabitantes civitatis Norwici.

"Information for not repairing three publick bridges, called Harford bridges, lying within the county of the city of Norwich, leading from the market-cross to Ipswich, and sets out that they are out of repair, and that it cannot be found that any person or body politick is bound by tenure or otherwise to repair them, and therefore the inhabitants of the county of the city are bound by the statute, notwithstanding which they have not repaired them, but suffer them to continue in decay.

"Jacob Robins and Samuel Tremoult, two of the inhabitants of the city and county of the city, come in the name of all the inhabitants of the city, and plead not guilty. Then the record takes notice by way of suggestion, that the question is between the citizens of Norwich and the inhabitants of the county of Norfolk, and they being interested, there can be no indifferent trial had there, and Suffolk being the next county, the *venire* is awarded thither; and at the trial the jury find this special verdict:—

"That the city of Norwich is an ancient city, and has been time out of mind a county of itself, distinct from the

on the effect of the charter of Philip and Mary, by which certain lands were added to the county

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county of Norfolk. That the three bridges were, at the time of making the statute 22 H. VIII. c. 5, within the county of Norfolk, and not within the county of the city of Norwich. That Philip and Mary, 1st April, second of their reign, reciting the many inconveniences which had happened by not knowing the true bounds and limits of the county of the city, severed such an extent of ground from the county of Norfolk and annexed it to the city. That the three bridges are within the annexed boundaries, which are made to extend *usque ad* Harford bridge, which is the farthest of the three. That they are publick bridges, and no particular person bound to repair them. That they are out of repair; but whether the inhabitants of the county of the city are bound to repair them is the doubt of the jury, upon which they pray the advice of the court.

"*Reynolds*, Serjeant, *pro rege*, made three points:— 1. Whether the king can make a county of a city, or enlarge the boundaries of a prescriptive city, and make the enlargement parcel of it. 2. Admitting he may, whether the enlarged part shall be considered as parcel of the old city, so as to charge them with repairing within the 22 Hen. VIII. 3. Whether, in this case, the farthest bridge be within the bounds of the enlargement.

"1. As to the first question, there is no doubt but that the king may enlarge the boundaries of any city. Most of the cities of England are instances of the execution of such a power, and it has generally been done by charter, which was esteemed sufficient without an act of parliament. This city of Norwich was so made at one time or other, for in Bradley's treatise of cities and boroughs, it is mentioned as a borough, and part of the county of Norfolk. Henry the Seventh made Chester a county of itself, as appears by 4th Inst. 215; 4 Co. 33, a. Popham, 17.

of the city of Norwich, shows that such charters are operative for other purposes, and not for matters of jurisdiction only; as it was then held, that the liabilities of the inhabitants of the county of Norfolk, in respect of those lands, were thereby

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" 2. Taking it, then, that the king can enlarge any city, the next question is, where the charge of repairing bridges within such enlargement lies? The statute lays no absolute charge till the bridges are in decay; so that when the statute was made, though these bridges were within the county of Norfolk, yet, as they were not in decay, the statute had no operation upon them before they were annexed to the city of Norwich. If an hundred were to be made at this day, the statute of hue and cry would take place within it. So the prerogative of the king in collating to a benefice, void by the promotion of the incumbent to a bishoprick, extends to a new created parish, as was resolved in Dr. Birch's case, in Shower, where there are many instances of this nature."

The argument on the locality of the bridge is omitted as not bearing on the principle of the case; likewise those on the objection taken by *Raby* to the jurisdiction of the court, and the trial of the cause in Suffolk, for the same reason.

" *Raby, contrà.* The city and county of the city must be taken to be distinct, and if so, then the citizens only have appeared, for the appearance is *in nomine omnium inhabitantium civit'. Norwic'.* and then the issue is not well joined. I agree the king may annex land to a city or county in point of jurisdiction, but not in point of charge, for as to that it still remains parcel of the old county.

" *Reynolds* in reply. It is absurd to say the jurisdiction of the county shall be abridged in point of interest, and not in point of charge. The city has the land annexed to them, *et transit cum onere.*

determined and transferred to those of the county of the city of Norwich. Again, although it may be said, that the express provisions of these charters were confined to matters of local government or corporate franchises, still it is not to be assumed that it was in these particulars only that they were effective. Most large towns and cities are possessed by charter of an exclusive jurisdiction (*d*); it will also be found that a large majority of the corporate counties, at the time they were so made, enjoyed similar privileges (*e*).

"C. J. They who are not chargeable of common right may discharge themselves upon not guilty, and if so, the trial was well in Suffolk. If they could only give reparation in evidence, then it ought to have been in Norfolk. There is no doubt but the information lies in this case; and as to the appearance, we may take them to be the same persons. It seems to me that the farthest bridge is included, for it extends *ad exteriorem partem rivi*. There is nothing in that notion about distinguishing between jurisdiction and charge, for certainly both must go together." 1 Strange Rep. 177.

Further arguments afterwards took place upon the other objections, all of which were ultimately decided in favour of the crown. *Ib.*

(*d*) So is the Isle of Ely, which is governed under a grant of jura regalia to the then bishop of Ely and his successors from Hen. I. "This royall jurisdiction the bishop hath by prescription, grounded upon the said grant, (Hen. I.) as well in pleas of the crown as in common pleas, before his justices." 4 Inst. 220; *et vid.* 1 Bl. Com. 118.

(*e*) And sometimes the powers of the corporate officers were extended, for purposes of justice, out of their jurisdiction, to the precincts of the neighbouring castle. *Vide* Ch. 11 Ed. III. to Norwich; and 5 Car. I. to Bristol.

It is therefore clear, that the grant of exclusive jurisdiction could not have been alone the object of these charters; but in all probability they were granted, *bonâ fide*, for the purpose of making these districts separate and distinct counties, entitled to the same privileges (*f*), and subject to the same duties, as other counties, except when accompanied by some reservation controlling the extent of the grant.

In every case the charter of separation appoints a sheriff or sheriffs of the new made county, with the same powers as other sheriffs, even where the corporate body had previously been entrusted with the return of writs, and the execution of the process. The right to appoint a sheriff or sheriffs is the great distinction between the corporate counties and other places possessing an exclusive jurisdiction. For the right to have coroners, justices of the peace, and a gaol, independent of the county at large, is common to both, as is also the exemption from serving on juries out of their peculiar jurisdictions. The difference between the charters creating corporate counties and other charters, consists in the clauses of separation and

(*f*) The sheriffs are always empowered to account at the Exchequer like other sheriffs, and not through the sheriff of the county at large. This appears to have been considered one of the most important privileges conferred by the charters creating corporate counties. Also, most of the corporate counties are specially named in the commission of the lord lieutenant of the parent county. *Sed vide post.* Carmarthen, note (*d*).

creation, and as these, together with those by which former privileges are reserved, are the most material, they are given at length in the account of the charters of each place.

It should, however, be observed, that the office of sheriff, in all the corporate counties, is made elective by charter; and so was the office of sheriff, in general, previously to the (*g*) 9th Ed. II. st. 2, which (excepting where the office was hereditary) vested the appointment in the crown. The office of coroner is elective in all counties, both corporate and others; but the justices of the peace for the corporate counties derive their authority from charter, and are not like other justices appointed by the king's commission (*h*).

4th Inst. 271; Bl. Com. v. 1. p. 339; Reeve's Hist. of Eng. Law, v. 2. p. 235-297.

These charters have in no instance conveyed any political rights in express terms to the free-

(*g*) Some authors are of opinion that this statute merely revested the appointment of sheriffs in the crown. Hallam. v. 3, p. 179; Litt. Hen. II. v. 2, p. 221. But Lord Coke observes, that the 28 Ed. I. c. 8, restored the right of election to freeholders. 2d Inst. p. 559.

(*h*) Previous to the reign of Ed. III. the ordinary conservators of the peace derived their authority from prescription, election, or tenure. Lamb. Eirenarch, p. 16; *et vid.* the form of the writs for their election in full county, *ib.* p. 17. The appointment of these conservators was assumed by the crown, 1 Ed. III.; *et vid.* 1 Ed. III. st. 2. c. 16. During this reign several statutes passed regulating this office. It was the 34th Ed. III. c. 1. which first empowered them to try felonies, &c. Since this period the conservators have been styled Justices; *et vid.* 1 Bl. Com. 351; 2 Inst. 558.

holders or inhabitants, neither enabling them to return knights to parliament, nor to vote at the election of the town members (*i*). Consequently, if the freeholders of these counties claim any rights at variance with the usage which now obtains in each, that claim must be supported either by a usage of greater antiquity, or be consistent with the provisions of those statutes which at present regulate the exercise of the elective franchise of the freeholder.

The corporate counties are frequently recognised as independent counties in acts of parliamen; but it will be proper to notice one statute, which is somewhat at variance with the proposition just laid down: The 19th G. II. c. 28, intituled, "An act for the better regulating of elections of members to serve in parliament for such cities and towns in that part of Great Britain called England, as are counties of themselves;" reciting,

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(*i*) However, the charter of 47 Ed. III. making Bristol a distinct county, provides, that it "shall not in anywise be 'burthened' to send more than two men" to parliament, who should answer "both as knights of the county of Bristol, and as burgesses of the town and borough of Bristol;" *vid. post.* tit. Bristol. Also the charter of 24 Car. II. makes the same provision with respect to Gloucester, although that of R. III. making it a separate county, is silent upon this point. *Vide post.* tit. Gloucester. Mr. Rudder attributes this clause in the charter of Car. II. to an attempt that had been made by the inhabitants, in 1623, to return a knight for the county of the city. Hist. Gloucestershire, p. 121.

"Whereas by an act made and passed in the last session of parliament, intituled, 'An act to explain and amend the laws touching the election of knights of the shire to serve in parliament for that part of Great Britain called England,' several good provisions were enacted for the better regulating the said elections: And whereas it is reasonable that like provisions should be made for the due election of members to serve in parliament for such cities and towns in that part of Great Britain called England as are counties of themselves, and in which persons have a right to vote for electing such members for and in respect of freehold lands, tenements, or hereditaments, of the yearly value of forty shillings; "requires observance of the several statutes regulating the election of county members in all the places before alluded to, except "where the right of voting for any member or members of any such city or town is for or in respect of burgage tenure, or where the right of voting for such member or members, for or in respect of a freehold, does not require the same to be of the yearly value of forty shillings." Sect. 1. Sect. 13.

This act does not contemplate corporate counties as standing pari passu with other shires, or as included in any statutable provisions respecting the conduct of elections, unless expressly mentioned; but seems to treat the elective rights of the freeholders as dependant upon the usage obtaining in each place. This, for the most part,

is the case in practice however opposed to principle some of these usages may be found.

It should, however, be observed, that although this statute provides for the different mode in which the elective franchise was exercised in these counties, still that it merely sanctions these usages, without enforcing their observance, and therefore should be considered (except as to the forty shilling freeholders) as a declaratory, and not an enabling statute, and consequently not conclusive on this point.

There are nineteen corporate counties, all of which, with the exception of London, have been separated by charter from some other county since the 47th Ed. III. London seems to have been a county by prescription at the time of the Conquest, as, instead of being carved out of Middlesex, or any of the adjacent counties, it holds that county at a fee-farm rent of 300*l.* per annum, under a charter of Hen. I. Bristol was made a county by a charter of the 47th Ed. III. York by R. II. Lincoln, Newcastle-upon-Tyne, and Norwich, by Hen. IV. Coventry, Kingston-upon-Hull, Nottingham, and Southampton, by Hen. VI. Canterbury and Haverfordwest by Ed. IV. Gloucester by R. III. Chester by Hen. VII. Exeter by Hen. VIII. Lichfield by Mary. Poole by Elizabeth: and Carmarthen and Worcester by Jac. I. Haverfordwest was subsequently made a county by an act of the 34th and 35th Hen. VIII., and its limits were further enlarged by a charter of the

Vide tit. London, post.

Vide the Charters, post. under the title of each place.

Vide tit. Haverfordwest, post, C. 25.

7th Jac. I. Likewise the Ainsty of York was added to the county of the city of York by letters patent of Hen. VI.; as was the castle of Bristol to the county of the city of Bristol by a charter of Car. II. There are also numerous charters of confirmation, which have made slight alterations in the limits and jurisdictions of those places to which they have been granted. And the hundreds of Dudstone and Kings Barton, which were made part of the county of the city of Gloucester by the charter of R. III., were disunited therefrom, and restored to the county of Gloucester by act of parliament, in the 13th and 14th of Car. II., since which period the freeholders of those hundreds have exercised the right of voting for the county members; but the freeholders of the county of the city have no voice either for those of the county or city.

Vide tit. York, post. Lit. Pat. Hen. 6.

Vide tit. Bristol, post. Ch. Car. 2.

Vide tit. Gloucester, post. Ch. 1 R. 3.

It has been observed, that some charters are absolute and others exceptive. It will also be found, that in some corporate counties the freeholders have continued to vote for the knights of the shire of which they were originally a part; whilst in others they have lost that right, but acquired the privilege of voting for the town or city members; but that for the most part they are completely disfranchised. It therefore will be important to compare the nature of the charters granted to each place with the mode in which these rights are now exercised therein, to see how far, and in what places, the variance in usage

may seem authorised or accounted for by the nature or extent of the charters. But as the representatives of the corporate counties have hitherto, in many respects (*j*), been treated as those of cities and towns, and not as knights of shires, the right of voting for such places is in many instances settled by resolutions of the House of Commons, and in some by particular acts of parliament. The former more particularly apply to the corporate and burgess right of voting, and the latter entirely. For although the right of the freeholders to vote in conjunction with the burgesses or inhabitants is, in some instances, recognised by the resolutions, it is always (excepting in the case of Exeter) recorded as an admitted right, and not decided as one then in dispute. These points, however, will be noticed more in detail hereafter.

Vide Nottingham, post. petition, 1819.

Vide Resolution of 1660, post. tit. Exeter.

The sheriffs of the corporate counties are invariably the returning (*k*) officers. The

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(*j*) On the hearing of the petition against the return for Nottingham, in 1819, the committee decided that a list of objected votes, delivered within the time prescribed by the 53 G. III. c. 71, in the case of borough elections, was delivered in due time. *Vide* Nottingham case, Corbett and Daniell's Rep^s. 201, and tit. Nottingham, *post*.

(*k*) Consequently, on the petition against the return of Mr. Fleming for Southampton, in 1779, it was held, that he was eligible notwithstanding he was at that time sheriff for Hampshire.

writs (*l*) of election are directed to the sheriff or sheriffs, requiring them to cause proclamation to be made in the next county court, and to return two burgesses or citizens, as the case may be. And in each case, excepting those of Norwich and Haverfordwest, the parties signing the return state (*m*), whether they vote as freeholders or in any other capacity, no mention of any right of voting being made in the returns for those two places, although, in both, the freeholders vote in conjunction with the freemen.

Instances where the right of voting is retained.

The freeholders of Canterbury, Poole, Southampton, and the Ainsty of York, alone retain the right of voting for the knights of the parent county; and the charters of each may be consi-

(*l*) Although Berwick-upon-Tweed is not a county of itself, the writs of election are directed to the mayor and bailiffs of the borough, and not to the sheriff of the county of Northumberland.

(*m*) Wherever the freeholders vote, the form of the return is the same as that for Nottingham in 1820, (*vide post*. tit. Nottingham Petition of 1820). And even where the freeholders do not vote, as well as where they do, the right in which the voter makes the return is stated. The returns for Norwich and Haverfordwest, however, are exceptions to this rule, being signed by a few electors, who do not state in what right they vote, although the freeholders exercise the right in both instances. The returns for the corporate counties have been made in the same form since the Convention Parliament; but some of the earlier returns are more special, particularly those for Bristol. *Vide post*. tit. Bristol.

Instances where the right of voting is retained.

dered as exceptive, that is, as continuing the corporate as part of the parent county for certain purposes.

The Ainsty of York.

The Ainsty of York affords the most decided instance of an exceptive charter. In that case the provision controlling the clause of separation, will be found in the reservation of privileges. The city of York was made a county by R. II., to which the district of Ainsty was annexed, at the prayer of the inhabitants of the county of the city, by letters patent of Hen. VI. The Ainsty was previously in some measure subject to the jurisdiction of the county of the city, and was finally annexed thereto for the benefit and emolument of the city, which probably occasioned the following reservation in the letters patent:—"Saving always to the church of York, and the archbishop, dean and chapter thereof, and every other community spiritual and temporal, and all and singular other persons, all kind of franchises, privileges, rights, commodities and customs, to them or any of them of right belonging." The votes of the freeholders of the Ainsty continued to be received for the county members (but with a query) till 1735, when their right was disputed, and a petition presented; at the hearing of which, the letters patent of Hen. VI. were produced, and this saving clause relied upon as establishing their claim,—The House resolved, "That persons whose freeholds lie within that part of the county of the city of York which is commonly called the Ainsty, have

Lit. Pat. H. 6. vide tit. York, post.

Drake Hist. York, ib.

Resolution of the House of Commons, Journals, 9 Mar. 1735, vol. 22, p. 622.

a right to vote for knights of the shire for the county of York."

Usage in the county of the city of York.

The charter of R. II. does not contain any saving clause of this nature, and notwithstanding the resolution in favour of the freeholders of the Ainsty, those of the other part of the county of the city have never exercised this right, neither do they vote for the city members. This variance in usage is too marked to have arisen from inattention only; but it may easily be accounted for if attributed to an observance of the difference between the two charters, and is consistent with the decision of the committee against the claim of the freeholders of Coventry to vote for the knights for Warwickshire: for the charter of the 30th Hen. VI., like that of R. II., merely reserves the corporate franchises of the burgesses, and not any individual rights; it being a reservation to the mayor, bailiffs, commonalty, and burgesses, &c., and their successors, of all privileges, &c. enjoyed by them and their predecessors; terms which apply to corporate rights only.

The resolution of the House of Commons on the saving clause in the letters patent of Hen. VI. is also consistent with this decision with respect to Coventry: as, according to the principles at that time laid down by the judges in interpreting the charter granted by R. III. to the city of Gloucester, it must have proceeded on the ground, that the Ainsty of York remained part of the county of York for all purposes necessary to the full

Instances where the right of voting is retained, &c.

enjoyment of the privileges thereby reserved; and not that those letters patent enabled the freeholders of the county of the city to vote for the county, by dispensing with the observance of those statutes which require the freehold to be situate in the same county for which the vote is given.

Canterbury.

The reservation of former privileges in the charter granted by Ed. IV. to Canterbury, is not so extensive as the saving to the inhabitants of the Ainsty; and if this is to be considered as an exceptive charter, it must be on the same grounds. This reservation is as follows: "Provided always, that by force of our present grant no injury shall in anywise be produced to the mayor and commonalty of the city aforesaid, as to other the liberties, franchises, immunities, customs, constitutions and quittances to them or to their predecessors by us or our progenitors heretofore granted to them, *or to the late bailiffs and citizens of the same city, or by them used.*" It perhaps may be considered rather a nice distinction to assert that the latter part of this reservation, which confirms the privileges *used by the bailiffs and citizens*, must be taken as applying to personal and not corporate privileges, simply because no words of succession are used. I would, however, observe, that if this be the right construction, the usage in Canterbury for the freeholders to vote at the election of knights for the county of Kent, is warranted by the decision of the House of Commons in the Ainsty case; if not, this usage is

Vide Canterbury, post.

Canterbury.

inconsistent with all the decisions on the subject. It therefore may not be going too far to assume, that the omission, as well as the insertion of terms of succession in this instance, as well as in the charters granted to Poole and Southampton, (where alone the freeholders exercise the same rights as those of Canterbury,) was intentional; particularly as I have not met with any other charters of this nature in which the same distinction has been made. It is also a principle of law in construing grants or charters, that contemporaneous usage (*n*), or even subsequent usage, from which the former may be presumed, is not only admissible evidence, but the best means, when any doubt exists, of explaining the extent or nature of a grant. In this point of view, therefore, an uninterrupted usage for the freeholders of Canterbury to vote for the knights for the county of Kent, would be very material evidence in support of this construction of the charter. It is not intended to assert a positive opinion on this point; but those circumstances have been noticed which seem to justify the opinion, that the apparent anomaly in the rights exercised by the freeholders of Canterbury may be explained and warranted by the charter of Ed. IV.

(*n*) 2 Inst. 282; Phillipps on Evidence, v. 1, p. 547, 5th edit.; also the Evesham cases, Corbett and Daniell's Elect. Rept. 26 and 52.

Instances where the right of voting is retained, &c.

In considering the charters creating Southampton and Poole counties of themselves, it will be found that the privileges of the latter in some measure depend upon those enjoyed at Southampton, in consequence of the following clause in the charter of Elizabeth: "Moreover, &c. we, &c. do grant, that the inhabitants, burgesses and commonalty of the town of Poole aforesaid, may and shall have their guild, and all their liberties, franchises, privileges, jurisdictions and customs, by land and by sea, as well and peaceably, and justly and freely, and quietly and honourably, as the mayor, bailiffs and burgesses of our town of Southampton more freely and quietly have, no one doing to them thereupon any injury or outrage; and all other liberties, franchises, immunities, customs, grants and privileges *which the mayor, bailiffs, burgesses and inhabitants of the town* of Poole aforesaid heretofore have used and enjoyed." This reservation may be held to apply to privileges which are not of a corporate nature, no words of succession being used, more particularly as the ensuing clause (which also makes reference to Southampton) is couched in different terms: "And that through all our dominions and realm, they (*i. e.* the mayor, bailiffs, burgesses and commonalty of Poole) shall have and hold all their liberties and free customs hitherto obtained and used, as quietly and wholly as the burgesses of our town of Southampton, or any others of our kingdom and realm, better and more freely have and

Southampton and Poole.

Vide post. tit. Poole.

hold within their liberties; wherefore we do will, and firmly command, for us, our heirs and successors, that the aforesaid mayor, bailiffs and burgesses, and their successors, for ever shall have all liberties and prescriptions, and use the same from henceforth for ever, freely and without the hindrance of any one as is aforesaid." Consequently, the same observations which were made on the Canterbury charter, will also apply in this instance. The charter granted by Hen. VI. to Southampton may be deemed exceptive, on the following grounds: The preamble recites, that the mayor, bailiffs, burgesses and inhabitants of the said town, and also very many of the foreign merchants and seamen resorting thereto, were arrested and disturbed by the sheriffs, &c. of the county of Southampton, in consequence of which they had humbly besought the king to provide a remedy in that behalf; and then proceeds to make the "said town, with the port and precincts, and also the port of Portsmouth, which are now called the town of Southampton," a county in itself, to the intent that the said mayor, &c. and the said foreign merchants, &c. may for the future be able more freely and quietly to attend to their business, and the said mayor, &c. to support their charges and expenses. This is done in the usual explicit and peremptory terms; but the preceding recital is unusual, and I know of no other charter in which the inconvenience of the county jurisdiction is so expressly made the ground for creat-

Poole.

Southampton.

Vide post. tit. Southampton.

Instances where the right of voting has been retained, &c.

ing a new county. The reservation of privileges is made to the mayor, bailiffs and burgesses of the said town, and their successors, of those privileges which had been granted to, or enjoyed by, their predecessors, with this addition, "Provided also, that by force of our said grant, no injury shall in anywise be produced to the bailiffs, burgesses or inhabitants of the town of Portsmouth, as to any liberties, franchises, acquittances or immunities to them heretofore granted, or by them of old time used and approved." In this instance the word *inhabitants* is introduced, which was not the case in the reservation to the corporate body. But it may be observed, that Southampton is not mentioned in this reservation. Portsmouth, however, is used as synonymous with Southampton in a former part of the charter, as "the said town, with the port and precincts of the same, and the port of Portsmouth, which are now called the town of Southampton." If any doubt exists as to the extent of this reservation, it may be contended, from the avowed cause of separation and creation set out in the preamble, that it applies to the whole district, and that the charter is exceptive, and granted for purposes of local government only. This line of argument may be considered as turning on rather subtle distinctions, and recourse must again be had to the usage of the freeholders to vote for Hampshire, to give it support. But as it is a legal maxim, that every thing shall be intended to be done according, and

not contrary to law, it may not be pressing this argument too far to say, that if a reasonable ground for the legal possession of this right can be found on the face of the charter, that the usage under it ought to be taken as the true interpreter of the extent and nature of the grant.

Southampton.

These are the only instances in which the right of election is retained by the freeholders for the parent county; and if the construction I have suggested be correct, the usage is in this respect uniform and consistent with the principles of construction applicable to exceptive charters.

Exceptive charters jurisdiction.

The other cases of exception are where a right of entry is reserved to the officers of the parent county or others, giving them jurisdiction to hold courts therein, in which to transact the business of the county at large; or where particular places, such as the castle, gaol, or town-hall, are continued as part of the original county for similar purposes. Gloucester, Worcester, Newcastle-upon-Tyne, Nottingham, Norwich, &c. afford instances of this nature, which it will not be necessary to notice further than to observe, that in the first case, although the exception extends to the whole county, still that it is only operative for the particular purposes which are expressed, and therefore does not affect the elective franchises of the freeholders. And in the second, where the exception affects the particular place, that such places are in every respect treated and considered as part of the parent county.

Exceptive as to particular places.

Where both freeholders and freemen vote.

The freeholders of Bristol, Haverfordwest, Lichfield, Norwich and Nottingham, have acquired the right of voting for the town or city members in conjunction with the burgesses and citizens. It has been already observed, that this right has in no instance been communicated in express terms, either by charter, the resolutions of the Commons, or act of parliament, consequently its origin must be looked for in usage. The effect which usage has had in determining the elective rights of the freeholders of the corporate counties has been before adverted to and considered in the four instances in which they retain votes for the parent county. I now propose to examine the history of the five counties above-mentioned, in which that right has been acquired by the freeholders for the town or city; and subsequently that of the eleven, in which they are completely disfranchised.

It is somewhat difficult to reconcile these different usages, unless it be by assuming, that, in some instances, attention was paid to the alteration supposed to have been produced in their parliamentary rights, whilst in others, former customs continued to be observed: a degree of irregularity which is not inconsistent with the unsettled state of the parliamentary body, even during the reigns of the Tudors.

The grounds for supposing that a change in the elective rights was contemplated at the time these charters were granted, do not rest upon the

usage in Bristol and the four other counties before alluded to, but may be collected from the language of the charters granted by Ed. III. to Bristol, and Car. II. to Gloucester, also from the earlier writs and returns for Bristol.

What effect the charters creating corporate counties ought, in a constitutional point of view, to have produced on their parliamentary rights, cannot be laid down with certainty, although the natural inference is, that the freeholders became entitled, or according to the feelings of those times, liable, to return two knights to parliament for each county. The charter conferred on Bristol by Ed. III. shows, that this was considered a liability incident to the change thereby effected, against which it was necessary to provide an express exemption (o); and that granted by Car. II. to Gloucester recites, that it was a custom in other

Vide charter 47 Ed. 3, tit. Bristol, post.

Vide charter 24 Car. 2, tit. Gloucester, post.

(o) If this supposition is correct, the exemption in this charter could not have discharged the freeholders from their liability to return knights to parliament; but in the present instance, it is not necessary to canvass the dispensing power occasionally assumed by our earlier kings, because this charter having been subsequently confirmed in parliament, would be valid against any law or statute in force at that time. In Knolls *v.* Soley, Palmer Rept. p. 542, it is laid down, that the citizens of London may prescribe against a statute, because their liberties are confirmed by statute; *et vide* Year Book, 8 Hen. VII. f. 4. The same doctrine also is laid down in 4th Inst. p. 250; *et vide* the London Quo Warranto case, temp. Car. II. p. 30, 31.

Where both freeholders and freemen vote.

cities and towns to choose two burgesses and two knights for the county of the same, but that such had not been the usage in Gloucester; and directs, that the burgesses for that city should be chosen in the county court by the mayor and burgesses, and should serve as burgesses for the city, and knights for the county of the same.

Bristol.

I will now advert to the history of Bristol, which affords the best illustration of the origin of the usage we are now considering.

[1] Prynne Brev. Parl. v. 3, p. 351.

From [1] the 26th Ed. I. to 47th Ed. III. the precepts for electing the members for Bristol issued from the sheriff of Gloucestershire, to whom their names were returned, which he indorsed on the writ for Gloucestershire, since which period the writs have been directed to the sheriff of Bristol.

The charter creating Bristol a county is dated the 8th August, 47 Ed. III., and contains the following clause: "And moreover we have granted, &c. that the said town of Bristol shall not in anywise be burthened to send more than two men only to the parliament of us and our heirs, as has been customary hitherto, which two men shall be bound to answer for the same town and borough, in those parliaments, (*p*) both as knights of the county of Bristol and as burgesses

(*p*) The members for Bristol claim to be entitled to receive, not only the wages of burgesses, but in addition, half the difference in amount between the wages of a knight and a burgess.

Bristol.

of the town and borough of Bristol;" and on the 20th of December following this charter was confirmed by the assent of parliament (*q*). The last return made by the sheriff of Gloucestershire, was of two burgesses for the borough of Bristol; but on the 4th October, 47 Ed. III., writs were issued for a parliament, upon which occasion one was directed to the sheriff of Bristol, requiring him to return two burgesses for the aforesaid county. In the 13th Hen. IV. two burgesses were returned by the sheriff, to answer (in the terms of the charter) as knights for the

See the different returns, post. tit. Bristol.

(*q*) From the following passage in Cotton's Tower Records, this appears to have been a private act, in the shape of a charter from the crown: "The burgesses of Bristoll require, that the same town, with the suburbs of the same, may be a county of itself; and that the perambulation of the bounds of the same returned into the Chancery, with all the liberties and charters granted unto the same, may be confirmed by parliament.—Answer: The king granteth that the charters, liberties and perambulation mentioned before, be confirmed under the Great Seal." *Et vide* the charter of Confirmation, 20th December, 47 Ed. III., *post.* tit. Bristol. Private acts of parliament were frequently passed in the form of charters, "as more for the honor of the king." The Prince's case, 8 Rept. p. 18; and this charter is stated to be confirmed under the great seal, which was the usual way of authenticating acts of parliament. 8 Rept. p. 18; Hob. Rept. 109; Co. Litt. 98, b; London Quo Warranto case, temp. Car. II. p. 82. Bristol, in this respect, therefore, ought to be classed with London and Haverfordwest, as they also hold their privileges on the authority of parliament.

Where both freeholders and freemen vote.

county and burgesses for the borough. But in the 4th Hen. VI. the writ only directed the sheriff to return two burgesses; in consequence of which the burgesses petitioned parliament to enable their representatives to appear in the double capacity, as prescribed by the charter of Ed. III. In 14th Hen. VI. two burgesses were returned *by the mayor in the guild-hall*, to answer both as knights and burgesses. The writ of the 25th Hen. VI. is directed to the sheriff, and recites the clause in the charter of 47 Ed. III. exempting Bristol from sending more than two members to parliament; also the statutes of the [1] 8th and [2] 23d of Hen. VI. and requires him to cause two men to be chosen as well for knights as burgesses. The return to this writ was made by the sheriff, the mayor, and thirty-three others by name, who describe themselves as "Burgenses et mercatores in villa Bristol, commorantes et residentes, quorum quilibet habet liberum tenementum ad valentiam quadraginta solidorum annum ultra repris. in eadem villa;" who returned "Thomas Young and Jones Sharp, jun. "mercatores ejusdem villæ, in eadem villa commorantes," &c. "ad respondend. in parliamento tam ut milites pro com. Bristol, quam ut burgenses pro burgo et villa prædicta, juxta formam cartæ domini Edwardi, &c." From this return, it appears probable that none but freeholders elected in this instance. There are several other returns [3] in this and the subsequent reign, which show that the provisions of the

[1] C. 7.
[2] C. 14.

[3] Vide post. tit. Bristol, where they are inserted chronologically.

Bristol.

charter of the 47 Ed. III. continued to be observed, as likewise the qualification required of all freeholders by the act of 8th Hen. 6. From which documents it is apparent, says Prynne [1], "That those two elected for the county and town of Bristol were elected and returned by the king's charters and writs, as well as knights for the county, as burgesses for the borough of Bristol."

[1] Brev. Parl. Red. v. 3. 367.

But although the charter of the 47 Ed. III. was thus explicit with respect to the capacity in which the future members for Bristol should be returned, it was silent (unless by implication) as to the persons by whom their return should be made; consequently the interference of the freeholders must have been considered warranted, as a right incident to the new state of things; in which point of view, this usage becomes explanatory of the effect which this charter was understood to have produced. In the 1st Car. I. the corporation of Bristol made a bye-law, whereby "It is enacted, that whensoever any writ for any election of knights, citizens or burgesses, for the parliament, shall come to the sheriffs of this city, the election shall be made by the mayor, aldermen and common council for the time being, and *the freeholders* resident within the said city, and by none others [2]." A bye-law of a corporation cannot affect a right of this nature, but it is inserted as a connecting link in the chain of evidence, by which the usage of the freeholders of

[2] Barrett's Hist. of Bristol, p. 142.

Where both freeholders and freemen vote.

Bristol to vote for the city members is now supported; because, so far as they are concerned, it is consistent both with the earlier returns and the subsequent usage. It also is conceived, that this usage is consistent with a sound construction of the legal effect of the charter of 47 Ed. III. The same consequences, however, did not follow the insertion of a similar clause in the charter granted by Car. II. to Gloucester. But it should be recollected, that the charter of the 47 Ed. III. does not direct who should elect, whereas that of Car. II. empowers the mayor and burgesses, and their successors, to elect.

Haverfordwest.

The lordship, &c. of Haverfordwest was made a county of itself by a charter of Ed. IV., and annexed to the county of Pembroke by act of parliament in the 27th Hen. VIII. It was by this statute that the county of Pembroke (in common with the other shires within the principality) acquired the right of returning a knight to parliament.

C. 26, sec. 17.

Haverfordwest was empowered to return a member by a statute passed in the 34 & 35 of Hen. VIII. in the following terms:

34 & 35 Hen. 8, c. 26, s. 111.

"Item, That the town of Haverfordwest shall, after the end of this present parliament, for ever find one burgess for the said town at every parliament after that time to be holden; and the charges of the same burgess to be always borne by the mayor, burgesses and inhabitants of the said town, and none other."

Haverfordwest.

Although this place was created a county by a charter of Ed. IV., it is not noticed as such in the statute annexing it to the county of Pembroke: it, however, was again made a distinct county by the 124th section of the 34 & 35 Hen. VIII. c. 26.

The section empowering the town of Haverfordwest to return a member to parliament, does not take any notice of the freeholders, but requires the charges to be borne by the mayor, burgesses and inhabitants. Neither does the 124th section direct that this member should answer both for a knight and burgess, as in the case of Bristol; and yet, in 1715, it was *agreed* that the right of election was in the freeholders, burgesses and inhabitants paying scot and lot, which has since continued the right for this place. It does not appear when the freeholders first exercised this right; but it is probably a usage of no very antient date, as on the hearing of a petition in 1662, "touching the election for this town and county," the question was, whether the mayor and burgesses of the town only, or the mayor, burgesses and inhabitants paying scot and lot, had voices; and the committee of privileges, upon perusal of the statute of Hen. VIII., decided in favour of the mayor, burgesses and inhabitants paying scot and lot, making no mention of the freeholders. This resolution is consistent with the 109th section of this statute; but according to the legal maxim,

Vide petition and resolution of 1715, post. tit. Haverfordwest, and Journals, May 15, 1715.

Journals, 4th April 1662

Haverfordwest. that expressio unius est exclusio alterius, the present usage is not; consequently it can only be supported by considering that this usage was authorized by the act of separation and creation, although the freeholders were not mentioned in the statute.

Lichfield. Lichfield was made a county of itself by a charter of Mary. It had previously returned members to parliament, though not regularly, till the reign of Ed. VI. The right of the freeholders to vote for the city members rests upon usage, sanctioned by resolutions of the House of Commons in 1701 and 1718; when this right was recognised and agreed to without argument, the points in dispute being confined to the nature of the burgess right. The decision in 1701, on the freeholders right, was not merely speculative, as the votes of several were then objected to, not as disputing the right, but for want of title or deficiency in value. Also, in 1722, an irregularity in the holding of a county court for the purpose of an election, was made the subject of petition.

Norwich. Norwich was made a county by a charter of the 4th Hen. IV., and first returned members to parliament in the 26th Ed. I. In the 13th Hen. IV. (only nine years after Norwich was separated from the county of Norfolk), disputes arose between the mayor and his counsel, and the commons, in consequence of which a composition was entered into, by which, amongst other things, it was agreed that "the burgesses for knights of the

Norwich.

shire shall be chosen by common assembly, and their names declared to the mayor, sheriffs, and their council in pleyn shire in the guildhall (*r*)."

Blomefield. Norfolk, p. 89.

Subsequent returns, and other documents, show that the elections of members of parliament continued to be made in the county court for the county of the city. And in 1701 a petition was presented, on the hearing of which the right of election was not controverted, but resolved by the committee to be in the freeholders as well as the freemen, which resolution, together with the statute of 3 G. II. continues to govern the right of voting. This act, however, does not affect the freeholders right, but that of the freemen only (*s*).

Vide post. tit. Norwich.

c. 8.

(*r*) This agreement shows that the elections for Norwich were then considered as county elections, as it provides that the members should be elected in the same manner as other county members, according to the provisions of the 7th Hen. IV. c. 15. The term "the burgesses for knights of the shire," in this agreement, also proves that the city members were considered as returned in a double capacity, although the charter of 7th Hen. IV. contained no provision to that effect, as in that granted by Ed. III. to Bristol.

(*s*) In 1555, Mary granted a charter to Norwich, which "was confirmed by authority of parliament, in which the limits and bounds of the city, and county thereto belonging, are fixed and determined;" and which also contained the following reservation of "the liberties of all persons within the same county, and the several towns and hamlets and precincts thereof, belonging to the several lords of the several manors and owners of lands, &c. to them and their

Nottingham.

Nottingham has returned members to parliament since the 26th Ed. I. and was made a county of itself by Hen. VI. There has been only one resolution of the House of Commons on the right of voting for Nottingham, which took place in 1701, when it was agreed to be in the mayor, freemen, and the freeholders of forty shillings per annum. It is most probable this resolution was founded on previous usage, consonant to that which has subsequently prevailed; for although, in two recent instances, committees have been called upon to decide how far these elections should be considered as county or borough elections, in neither has the right of the freeholders to vote been questioned.

Journals, 10th June 1701.

Tit. Nottingham, post. petitions of 1818 & 1820.

We therefore find that the usage in these five instances is the same, whether the charter was granted by Ed. III. or Mary, or contained any special clause or not, or whether the creation of the county was effected by charter or act of par-

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heirs, to be enjoyed in as ample a manner as before the making of this charter." Blomefield's Norfolk, p. 193; *et post*. tit. Norwich. If the charter of Hen. IV. had contained a similar clause, it might have been contended that the freeholders of Norwich ought to stand in the same situation as those of the Ainsty of York; but in the reign of Mary this reservation could only apply to the liberties which those persons then enjoyed in the county of the city of Norwich, and so far it would operate as a parliamentary confirmation of their previous usage to vote for the city members.

liament; and that in all, with the exception of Haverfordwest, the freemen, burgesses or inhabitants had previously returned members; consequently that the admission of the freeholders to vote, on the creation of the corporate county, must have been contrary to the former usage, and may be considered as affording a contemporaneous exposition of the effect thereby produced.

Nottingham.

Where the freemen only vote.

Freeholds situate in Canterbury, Carmarthen (*t*), Chester, Coventry, Exeter, Gloucester, Kingston-upon-Hull, Lincoln, London, Newcastle-upon-Tyne, Poole, Southampton, Worcester and York, do not confer votes for the town or city members; which usage has, in several instances, been confirmed by resolutions of the House of Commons and by acts of parliament, which have settled the right of election in the freemen, burgesses or inhabitants only. It will not be necessary (as in the preceding cases) to enter into the parliamentary history of each of these places, as the right of election remains unaltered. It will be sufficient to observe that this usage has obtained in all; for although the rights of election in many instances have been controverted before committees of the House of Commons, I have found none in which the freeholders have advanced any claim to participate with the freemen in their franchise.

(*t*) Persons possessing freehold property within the county of the borough of Carmarthen are entitled to be admitted burgesses. *Vide post.* tit. Carmarthen, Ch. 4 G. 3.

Where the freemen only vote.

If the validity of the freeholders right to vote for the town or city members was to be decided by a reference to the usage obtaining in each place, it would be negatived by a majority of fourteen to five; and if the three counties be deducted of which the freeholders continue to vote for the parent county, a majority of eleven to five will still remain. This difference cannot be attributed to the date at which the county was created, as it frequently happens that usage has, in this respect, put a different construction upon charters granted in the same reign. I have before adverted to the irregularities which prevailed during the earlier periods of the parliamentary history, and to the attempts which were frequently made to escape from the burden of contributing to the wages of the representatives. It may also be doubted whether the freeholders could have been compelled to contribute to the wages of the town members, except when the usage for their so doing had received the sanction of parliament. These are circumstances which may account for the freeholders voting in so few instances. Another reason may be, that in some cases the freeholders entirely, or for the most part, were voters in another capacity, which might have occasioned their right, as such, to have been first overlooked, and subsequently lost sight of. The present usage of Bristol confirms this supposition; for although the right of the freeholders to vote has been so fully recognised, it is usual for all

those who possess the double right, to vote as freemen, their qualification as such being more easily proved.

Where the freemen only vote.

Lord Coke has said, "to treat of the great and notable franchises, liberties and customs of the city of London, would require a whole volume of itself." But notwithstanding the truth of this observation, the facts which bear on this part of our inquiry are few. For although London appears to have been a county by prescription at the time of the Conquest, the usage affecting the elective franchises of the freeholders is the same as in the majority of those counties which have been subsequently created by charter. Nor can any inference be drawn to the contrary from the fact of London returning four, instead of two members, as that originated in the importance of the city, and not from the circumstance of its being a county of itself. And as all the charters and liberties, as well as the right of election, have been confirmed or settled by act of parliament, its privileges are no longer dependent on usage, and cannot now be controlled or altered, except by the same authority.

London.
4th Inst. p. 249.

Prynne, Brev. red. v. 3. p. 377.

2 W. & M. Sess. 1. c. 8.

11 G. 1. c. 18.

Having considered the effect which usage has produced on the elective franchises of the freeholders of the corporate counties, we will next inquire how far they have been settled or limited by acts of parliament or resolutions of the House of Commons.

I observed, in the Introduction, that the different

Where the right of election is regulated by act of parliament.

usages, with respect to the elective franchises of the freeholders of corporate counties, did not originate in act of parliament or charter. But notwithstanding this is the case, the right of election has, in several instances, been expressly settled by statute; in others the usages and franchises have been confirmed by parliament; and in many the right of voting has been determined by resolutions of the House of Commons. In each case the act of parliament, or resolution, has been confirmatory of, and not contradictory to the usage which previously prevailed.

Coventry.

The right of election for Coventry having been the subject of several resolutions of the House of Commons, was finally settled by the 21 G. III. c. 54. This statute recites the resolution of 1722, declaring the right to be in such freemen as have served seven years apprenticeship to one and the same trade in the said city or suburbs, and enacts that "every person who shall come to poll at such election, shall, if required by any candidate, &c. previous to his being permitted to poll, take the following oath:—'You do swear that your name is ———, and that you have been admitted to the freedom of the city of Coventry, under indentures or deeds of apprenticeship; and that you have served seven years apprenticeship to one and the same trade, in the said city or the suburbs thereof; and that you are of the age of twenty-one,'" &c. It will be recollected that this is one of those places where the freeholders do not appear

Sec. 7.

to have ever been electors of the city members. The validity of this usage is now immaterial, as since this statute no one can vote who does not take the above-mentioned oath, required of the freemen; consequently the freeholders of the county of the city of Coventry are completely incapacitated from voting (as freeholders), by the authority of parliament; being indirectly excluded from voting for the city members by the 21 G. III. and declared to have no votes for the county of Warwick by the resolution of the committee in 1821.

Where the right of election is regulated by act of parliament.

By the 11th G. I. c. 18, it is enacted that every person, before he is admitted to poll at the election of any citizen or citizens to serve in parliament for the city of London, shall swear that he is a freeman of the city of London, and a liveryman of the company of ———, and has so been for the space of twelve calendar months, &c.; consequently this oath likewise excludes the mere freeholder, and settles the right in the freemen only, as absolutely as the 21 G. III. in the case of Coventry.

London.

Sec. 1.

By a resolution of 1701, the right of election for Norwich was declared to be "in the freeholders and such freemen as are entered on the books," &c.; and the 3d G. II. c. 8, requires that "every person, before he is permitted to poll *as a freeman*, at any election of a citizen or citizens to serve for the said city of Norwich in parliament, shall take this oath:—'You do swear that you

Norwich.

Journals, 12 Mar. 1701.

Where the right of election is regulated by act of parliament.

are, and for twelve calendar months have been admitted a freemen of the city of Norwich, and that you have not been before polled at this election.'"

This act of parliament passed to regulate the corporate, as well as parliamentary elections at Norwich, and seems to have been penned without reference to the circumstance of Norwich being a county of itself. But as it requires the oath above mentioned to be taken by those only who poll as freemen, it does not interfere with the right previously exercised by the freeholders, which rests, as before, upon usage, sanctioned by the resolution of 1701.

Charters, &c. confirmed by parliament.

The privileges and franchises granted by charter to Bristol, Canterbury, Chester, Exeter, London, Norwich and Southampton, have been confirmed by parliament. These parliamentary confirmations have been passed in terms applicable to the respective grants and usages generally, without any particular reference to the elective rights of the inhabitants; consequently it will not be necessary to refer to them more minutely.

Resolutions on the rights of election.

The right of election for Carmarthen, Chester, Coventry, Exeter, Haverfordwest, Lichfield, Norwich, Nottingham, Poole, Southampton and Worcester, has been settled by resolutions of the House of Commons.

I have before observed that the freeholders in five instances only vote for the town members,

and in each, with the exception of Bristol, this right is recognised in the resolutions of the House of Commons, and appears to have been admitted without dispute. If the freeholders of a corporate county are entitled to vote for the corporate members (as seems to have been assumed in the cases of Bristol, Haverfordwest, Lichfield, Norwich and Nottingham), their claim may yet be made in other instances, as the resolutions before alluded to are all affirmative; for although, in some, the right of the citizens or burgesses is alone asserted, I have found one only (*u*) in which that of the freeholders is negatived. This right, therefore, has not been destroyed by such resolutions; neither is it like an office or franchise, which being the subject of grant, may be lost by nonuser; but it must depend upon the application of the statutes regulating the elective rights of freeholders, to the circumstances of each corporate county.

Resolutions on the rights of election.

Where matters are doubtful, usage has always been received as evidence of right, particularly in such as are the subject of grant; and where the grants or charters are in existence, and different usages have prevailed, contemporaneous usage is considered the best interpreter; but if a clear

Usage, effect of.

(*u*) On the hearing of a petition against the return for Exeter, in 1660, one of the questions was, whether the freemen alone, or the freemen and freeholders together, had the right to elect; when it was decided in favour of the freemen. The right, however, is now exercised by the freeholders as well as the freemen. *Vide post*. tit. Exeter.

Usage, effect of.

legal right can be established, usage cannot prevail against it. Upon this point we have seen, that the usages are different, and not to be reconciled with each other, either by the terms of the charters, or the periods at which they were granted; although the statutes regulating the elective rights of freeholders are clear, the charters in existence, and the contemporaneous usage for the most part, can be ascertained. In the absence of all authority, I will not presume to assert which usage ought to prevail, but that of the majority seems the most correct.

It is also probable, from analogy, as well as from the language of the charters granted to Bristol and Gloucester by Ed. III. and Car. II. that the sheriff of each new-made county may have been legally required to return two knights for his county; but the invariable usage to the contrary, negatives this having been an admitted consequence of the act of separation and creation. But whatever the strict legal right was, or still is, a practical hardship must be felt by the freeholders of the eleven corporate counties, who are completely disfranchised; and, if an opinion may be given, seems one which, under all the circumstances, would be more beneficially removed by an act of the legislature than by an appeal to existing laws. In this point of view, the usage in those places, where the freeholders vote in conjunction with the freemen, confirmed as it has been in four instances by resolutions of the House

of Commons, appears to afford a good precedent for the restoration of these disfranchised freeholders to a participation in the political rights of other freeholders.

Usage, effect of.

There are also corporate counties in Ireland for which a sheriff or sheriffs are appointed, and where the freeholders vote in conjunction with the freemen in the election of the corporate member.

Irish corporate counties.

It is not within the scope of this publication to enter at length into the history or privileges of these places, and it is the less material, as the attention of the legislature has frequently been directed to the mode in which their members are elected, and the various enactments on this subject have been enumerated and revised in a recent statute, intituled, "An Act to consolidate and amend the several Acts now in force, so far as the same relate to the election and return of members to serve in parliament for counties of cities and counties of towns in Ireland."

4 G. 4, c. 55.

The provisions of these statutes not being applicable to English corporate counties, I shall not refer to them more particularly; they, however, may afford a precedent for the attention of parliament being turned to the same subject with respect to England. I will only add, that on reference to the minute-book at the Crown Office, it will be found, that returns are made for the counties and towns of Carrickfergus and Drogheda, and for the counties and cities of Limerick

Irish corporate counties.

and Kilkenny, by the sheriffs. In the three latter instances, the freeholders appear, by the terms of the return, to elect in conjunction with the freemen; but the return for Carrickfergus does not state in what right the electors vote. Returns are also made by the sheriffs for the cities of Cork, Dublin, Londonderry and Waterford, and the town of Galway. That for Cork purports to be made by freeholders as well as freemen, who elect "*two knights.*" The electors for Londonderry style themselves freemen and citizens, and elect one citizen. Those for Dublin, Galway and Waterford elect one citizen or burgess, but do not state in what right they elect. The members for Carrickfergus and Drogheda are each described as a burgess. Those for Limerick and Londonderry, as citizens.

COUNTY AND CITY OF BRISTOL.

Ancient history.

BRISTOL was a borough before the Conquest; and was governed by a præpositus, who acted under the constable of the castle. Barrett's Hist. of Bristol, p. 46. Sayer, 274. 79. 80; and Mad. F. B. 7. 13. 17.

The first charter upon record was granted by Hen. II. to the "men dwelling in my fee of the Marsh, near the bridge of Bristol," whereby he grants to them "their certain customs and liberties, and quittances, through all England and Wales, and through my land of the county of Gloucester." A similar charter was granted by Robert Fitzharding about the same period. Ch. Hen. 2. Barrett, p. 663.

In 1164, Hen. II. granted to his burgesses of Bristol freedom from toll passage, &c. throughout England, and that they should have all their liberties, acquittances and free customs. Ch. 10 H. 2. Sayer, Bristol charters, p. 1.

By a third charter, granted in the year 1172, he conferred upon his men of Bristow, his city of Dublin to inhabit, with such liberties as they had at Bristow. Ch. 18 H. 2.

In 1188, King John, then Earl of Moreton, granted a charter, in which he recited and confirmed former privileges to his burgesses of Bristol, which, with the exception of a few civic regulations, related to the holding of pleas and administration of justice. Ch. Earl Moreton, 1188.

1st of May 1227, Hen. III. granted a charter reciting and confirming that of 10 Hen. II.; Ch. 11 Hen. 3.

Charters.

Ch. 31 Hen. 3.

and on the 28th of July 1247, a second charter, by which he directed that the "burgesses of Redclive, in the suburbs of Bristol, shall for ever answer with our burgesses of Bristol before our justices as our said burgesses of Bristol answer, and not elsewhere as is aforesaid.

Sayer, 14.

Ch. Maurice Fitzharding, 1247.

In this year, likewise, Maurice Fitzharding confirmed to his men of Redcliffe, which was in his lordship or fee, all the liberties and customs which Robert his father had granted them temp. Hen. II.

Ch. 36 Hen. 3.

Ch. 40 Hen. 3.

By a charter granted in 1252, Hen. III. confirmed the charter of King John, whilst Earl of Moreton; and by another, dated 24 July 1256, empowered the burgesses of Bristol to choose and create, out of themselves, a coroner for the town aforesaid, for the purpose of making attachment of pleas, and the performance of other matters appertaining to the office of coroner, as our other coroners ought and use to answer. By this charter the burgesses are exempted from forfeiting their goods which may be in the hands of their servants for any fault of theirs; also the property of intestate burgesses is protected from confiscation; and further, it is granted, "that the same burgesses shall have and hold, through all our land and power, all their liberties and free customs hitherto obtained and used, as quietly and fully as the citizens of London, or others of our realm and power, have and hold their liberties, or better and more freely."

Sayer, 21.

Charters.

By a charter granted by Ed. I. in the year 1300, the charters of John Earl of Moreton, and 31st, 36th and 40th Hen. III. are inspected and confirmed. This charter likewise exempted the burgesses, and their successors, from murage, pannage and stallage, &c. and directed that they should choose their mayor in the town aforesaid, (the time of war alone excepted,) and present him to the constable of the castle for the time being, "who shall admit him as the custom is, and as such mayors of the same town heretofore used to be presented and admitted at our Exchequer, &c." Ch. 28 Ed. 1, 1300.

Edward II. by charter dated 17th February 1320, inspected and confirmed that of 28 Ed. I.; and 16th of October 1331, Edward III. granted a charter, inspecting and confirming those of 31st H. III. and 15th Ed. II. This charter further made provision for the management of the property of orphans within the city; likewise confirmed to the burgesses of the town of Bristol the view of frankpledge, enjoyed by them, their predecessors and ancestors, "from time of which there is no memory." Ch. 15 Ed. 2, 1320. Ch. 5 Ed. 3, 1331.

By a second charter, dated 24th April 1347, the same king empowered the mayor, bailiffs, and good men of the town of Bristol, to make and have a place of confinement for prisoners within the town; also provided for the punishment of such bakers as broke the assize of bread there. Ch. 21 Ed. 3, 1347.

Charters.

The next charter is dated the 8th of August, 47th Ed. III. by which Bristol is made a county of itself, as follows:—

12 Ch. 8th August, 47 Ed. 3, 1374.

(x) "Edward, by the grace of God, king of England, &c. to his archbishops, &c.—Know ye, that whereas by the charters as well of our progenitors, formerly kings of England, which with clauses of notwithstanding we have confirmed, as by our own, divers liberties and acquittances have been for ever granted to our beloved the burgesses of our town of Bristol, and their heirs and successors, as is more fully contained in the same charters: We, at the petition of our beloved the mayor and commonalty of the city aforesaid, truly asserting that the same town is situate partly in the county of Gloucester and partly in the county of Somerset; and that although the town aforesaid from the towns of Gloucester and Ilchester, where the county courts, assizes, juries and inquests are taken before our justices and other officers in the counties aforesaid, be distant thirty miles of road, deep in winter time particularly, and dangerous to passengers, the burgesses of the said town of Bristol are nevertheless on many

Petition of mayor, &c.

Bristol part in Gloucestershire and part in Somersetshire.

Distant thirty miles from Gloucester and Ilchester.

(x) There are several translations of the Bristol charters in print, of which the most correct and valuable is the recent edition by Mr. Sayer. Where I have thought it desirable to insert any part of these charters at length, I have, in general, availed myself of that collection.

occasions bound to be present at holding the county courts and taking of the assizes, juries and inquests aforesaid, by which they are sometimes prevented from attending to their shipping and the management of their merchandizes, to the lowering of their estate and the manifest impoverishment of the same town: We, for the improvement of the said town of Bristol, and also in consideration of the good behaviour of the said burgesses towards us, and of their good service bestowed on us in times past by their shipping and other things, and for six hundred marks, which they have paid to us ourselves into our chamber, of which we will that none be charged toward us; willing to provide more amply and more abundantly for the aforesaid burgesses, their heirs and successors, profitably and quietly, of our especial favour, and by the deliberation and assent of skilful persons of our council assisting us; Have (*y*) granted, and by this our charter

Ch. 47 Ed. 3.

In consideration of good services and six hundred marks.

(*y*) "Concessimus, et hâc cartâ nostrâ confirmavimus pro nobis et hæredibus nostris, dictis burgensibus et eorum hæredibus et successoribus in perpetuum, quod dicta villa Bristoll', cum suburbiis suis et præcinctibus eorundem, juxta fines et boundas, prout limitatæ existunt, de dictis comitatibus Glouc' et Somersett' de cætero separata sit pariter et in omnibus exempta tam per terram quam per aquam, et quod sit comitatus per se, et comitatus Bristoll' nuncupata in perpetuum: et quod dicti burgenses et eorum hæredes et successores in perpetuum habeant infra dictam villam Bristoll', et suburbia ejusdem et eorum precinctus, per fines et boundas prout limitatæ existunt, libertates et quietancias subscriptas, et eis plene gaudeant et utantur."

Ch. 47 Ed. 3.

Grant that the town of Bristol be a county of itself.

have confirmed, for us and our heirs, to the said burgesses and their heirs and successors for ever, that the said town of Bristol, with its suburbs and precincts of the same, according to its metes and bounds as they are limited, be for ever in future alike separated, and in all respects exempted from the said counties of Gloucester and Somerset, both by land and by water, and that it be a county by itself, and called the county of Bristol: and that the said burgesses, their heirs and successors for ever, may have within the said town of Bristol, and the suburbs of the same, and their precincts, by metes and bounds as they are limited, the liberties and acquittances underwritten :" viz.

Mayor escheator.

Mayor for the time being to be escheator within the town of Bristol, its suburbs and precincts.

One sheriff.

Burgesses, commonalty, and their successors, to have one sheriff in the same town, suburbs and precincts, to be chosen annually; the burgesses and commonalty to select out of themselves three names, to be returned under the common seal of the town into Chancery, out of which names the king to choose one, to be sheriff of the said town for one year.

How chosen.

To account at the Exchequer.

Escheator and sheriff to account at the Exchequer, and no other persons for the future to act as escheator or sheriff within the said town.

Escheator and sheriff to have the same power and jurisdiction as other escheators and sheriffs.

County court.

Sheriff to hold his county court at Bristol from month to month, on Monday, as other sheriffs.

Mayor to hold his court in like manner, and to collect the profits thereof for the use of the commonalty of the town of Bristol as heretofore. Ch. 47 Ed. 3. Mayor's court.

No sheriff, escheator, or other officer of the aforesaid counties of Gloucester and Somerset, to enter the said town, suburbs or precincts, to execute any office therein. Sheriffs, &c. of Gloucester and Somerset excluded.

Mayor and sheriff empowered to account at the Exchequer by attorney, and not compellable to go out of the town to account for anything relating to their offices. Mayor and sheriff to account by attorney.

Mayor, on his election, to take his oath both as mayor and escheator, before his immediate predecessor and the commonalty in the Guildhall, without being presented for the future to the constable of the castle of Bristol, or accepted by the same, as has heretofore been accustomed. Mayor, how sworn.

Sheriff to take his oath by writ of dedimus potestatem before the mayor. Sheriff, how sworn.

Mayor and sheriff, and their successors for ever, to have power to hear and determine all manner of misdemeanors, &c. done within the said town, suburbs and precincts, with power to punish by fine and imprisonment. All fines, &c. to be accounted for and delivered in by the mayor and sheriff at the Exchequer annually, who likewise are directed to inquire concerning all felonies done in the said town, &c.; and to arrest and commit all such indicted to the prison of the town. Mayor and sheriff to try misdemeanors; Also felonies.

The burgesses, their heirs and successors, to have the custody of the goal; likewise infangthef Custody of the goal.

Ch. 47 Ed. 3.

and outfangthef; the mayor and sheriff for the time being required to do execution thereon.

Felons taken with the mainour to be tried.

Felons taken with the mainour, for any felony done within the town of Bristol, &c. to be tried by the mayor and sheriff.

Sheriff, &c. to receive appeals, &c.

Sheriff and coroner for the time being to have power to receive appeals of death and other felonies committed within the said town, &c. and to arrest the persons so appealed, and commit them to their gaol until delivered by due course of law by the justices assigned to deliver the gaol of Bristol, of which the mayor to be one.

Not to plead out of the town, &c.

No burgess of the said town, suburbs and precincts, nor any other person, on account of tenures within the said town, &c., nor on account of any thing done therein, &c., to plead before any judge out of the said town, nor to be convicted any otherwise than by his fellow burgesses.

Mayor and sheriff to have cognizance of pleas, &c.

Mayor and sheriff for the time being to have cognizance of all pleas, also of assizes of novel disseisin, and mort d'auncestre, &c., also of all trespasses, &c. arising within the said town of Bristol, (saving always such pleas as are accustomed to be held in our court of the Tolsey,) so that no other justice or officer, either of the counties of Gloucester or Somerset, or elsewhere, shall interfere; those cases only being excepted, where error hath happened to the justices in eyre, and to the justices appointed to deliver the gaol of the said town; also excepting inquisitions and

determination of customs, and subsidies of wool, &c. Ch. 47 Ed. 3.

Mayor to have power to receive and record recognizances of deeds, and other writings, touching land, &c. and to levy fines; also to receive probate of wills. Mayor to receive and record deeds and to levy fines, &c.

All writs, &c. which, before this separation, would have been directed, either jointly or separately, to the sheriffs of Gloucester and Somerset, to be henceforth for ever directed to the sheriff, escheator and coroner of Bristol for the time being. Writs to be directed to the sheriff of Bristol.

"And moreover we have granted, for us and our heirs, to the aforesaid burgesses and their heirs and successors for ever, that the said town of Bristol shall not in anyways be burthened to send more than two men only to the parliament of us and our heirs, as has been customary hitherto, which two men shall be bound to answer for the same town and borough in those parliaments, both as knights of the county of Bristol, and as burgesses of the town and borough of Bristol (z)." To send two members to parliament, as well for knights as burgesses. Vide the return of 13 Hen. 4, post. p. 75. Sayer, ch. 56.

Mayor and sheriff, with the assent of the commonalty, to elect forty men of the said town successively from time to time, who, together with the mayor and sheriff, shall be empowered to make regulations useful to the commonalty Mayor, &c. to elect forty men as a council.

(z) The members for Bristol, in addition to their wages as burgesses, are entitled to receive half the amount of the additional wages of a knight of a shire.

Ch. 47 Ed. 3.

aforesaid, and others resorting to Bristol; also to assess taxes upon the goods of all men of the town of Bristol, &c.; and persons resisting such ordinances, &c. to be punished by the mayor and sheriff according to the quantity of his offence, and the law and custom of England.

Confirmation of former privileges.

(*a*) "And we have also granted, for us and our heirs, to the burgesses aforementioned, that besides the liberties and acquittances aforesaid now granted by us to the same burgesses as is premised, and notwithstanding our said grants, or anything contained in the same, the said burgesses, and their heirs and successors for ever,

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(*a*) "Et etiam concessimus pro nobis et hæredibus nostris burgensibus antedictis, quod præter libertates et quietancias prædictas per nos eisdem burgensibus jam ut præmittitur concessas, ac non obstantibus dictis concessionibus nostris seu aliquibus in eisdem contentis, dicti burgenses et eorum hæredes et successores in perpetuum, habeant omnes alias libertates et quietancias eis tam per progenitores nostros quam per nos prius concessas, necnon omnes alias consuetudines suas et sua proficua inde provenientia, et eis plene gaudeant et utantur, prout ipsi et eorum predecessores semper hactenus, (à tempore quo eædem aliæ libertates et quietanciæ eisdem burgensibus per dictos progenitores nostros vel nos sic concessæ fuerint, seu aliter à tempore cujus contraria memoria non existit,) dictas alias libertates, quietancias et consuetudines, una cum proficuis inde provenientibus, habere eisque uti et gaudere consueverunt, sine occasione vel impedimento nostri vel hæredum nostrorum, justiciariorum, esceatorum, vicecomitum aut aliorum ballivorum seu ministrorum nostrorum aut hæredum nostrorum quorumcunque."

shall have all other liberties and acquittances, already granted to them, as well by our progenitors as by ourselves; and also all other their customs, and their profits thence arising, and shall fully enjoy and use them, as they and their predecessors have always hitherto (from the time at which those same other liberties and acquittances have been so granted to the same burgesses by our said progenitors, or by ourselves, or otherwise from time to the contrary of which there is no memory) been accustomed to have the other said liberties, acquittances and customs, together with the profits thence arising, and to use and enjoy them without obstruction or impediment of us or our heirs, the justices, escheators, sheriffs, or other bailiffs or officers of us or our heirs whatever. Wherefore we will and strictly command, for us and our heirs, that the aforesaid burgesses, and their heirs and successors, shall have all and singular the liberties and acquittances aforesaid, and may for ever fully use and enjoy them, and any one of them, in form aforesaid. These being witnesses," &c.

Ch. 47 Ed. 3.

Having granted this charter of separation, Ed. III. followed it up by the following letters patent, appointing commissioners to make perambulation of the bounds of the new-made county of Bristol, for the purpose of placing marks whereby it might be known from the counties of Gloucester and Somerset.

Letters patent, 1 Sept. 47 E. 3.

Sayer, 62.

"Edward, by the grace of God, king of England and France, and lord of Ireland, to the reverend fathers in Christ, John bishop of Bath and Wells, &c. sends health, &c.:—Know ye, that whereas, on the 8th day of August last past, we granted, and by our charter confirmed for us and our heirs, to our beloved the burgesses of the town of Bristol, and their heirs and successors for ever, that the said town of Bristol, its suburbs, and the precincts of the same, should for the future be separated equally from the counties of Gloucester and Somerset, and in all things exempted, as well by land as by water, and that it should be for ever a county by itself, and called the county of Bristol; and that the said burgesses, and their heirs and successors for ever, should have, within the said town of Bristol and suburbs of the same, and their precincts, certain liberties and acquittances, and should fully enjoy and use them, as in our said charter is more fully contained: We being willing to be certified concerning the metes and bounds of the town and suburbs aforesaid, and of the precincts of the same; and that perpetual divisions, by means of certain metes and bounds, be made between the same town, suburbs and precincts, now in such manner being and called the county of Bristol, and the counties of Gloucester and Somerset; and that for the future, as well the aforesaid divisions, as the precincts of the said counties of

Bristol, Gloucester and Somerset, be put in certainty by means of certain metes and bounds, and that there may be no ambiguity hereafter concerning the metes and divisions of the three said counties; we have appointed you, nine, eight, seven and six of you, for the purpose of faithfully making a perambulation between the counties of Bristol and the precincts of the same, as well by land as by water, and the said counties of Gloucester and Somerset, on the outside of the precincts of the same county of Bristol, by the oaths as well of knights as of other good and lawful men, as well out of the said counties of Gloucester and Somerset, as out of the said county of Bristol, both within liberties and without, by whom the truth of the matter may be better known; and for the purpose of placing, in that perambulation, certain marks and metes and divisions, which may be known for ever, between the said precincts of the county of Bristol, and the said counties of Gloucester and Somerset: And therefore we order you, that at certain days and places, which you, nine, eight, seven or six of you, shall appoint for this purpose, you attend to the premises, and to the making that perambulation in form aforesaid. We have also ordered our sheriffs of the said counties of Gloucester and Somerset, and the mayor of the said town of Bristol, that at certain days and places, which you, nine, eight, seven or six of you, shall make known to them, they cause to come before you,

Letters patent, 47 Ed. 3.

Perambulation of the boundary of the counties to be made.

Letters patent, 47 Ed. 3.

nine, eight, seven or six of you, so many and such knights, and other good and lawful men of the three counties aforesaid, as well within liberties as without, by whom the truth of the matter in the premises may be better known; and that you cause inquisition to be made, and notice to be given to us in our Chancery, as soon as you conveniently can, wherever we shall then be, under your seals, or the seals of nine, eight, seven or six of you, and under the seals of four lawful knights, out of those who shall have been present at that perambulatión, by what marks, metes and divisions that perambulation has been made. In witness whereof we have caused these our letters to be made patent. Witness," &c.

Perambulation return.
Vide Sayer, 66, where the return of this perambulation is set out at length.
Exemplification of return of perambulation.
13 Ch. 20 Dec. 47 Ed. 3. 1373.

In consequence of these letters patent, a perambulation of the bounds of the three counties, dated the 30th September 1373, was made and returned into Chancery, and which was inspected and exemplified by letters patent bearing date the 30th October in the same year; and on the 20th of December the king granted a charter of confirmation, which inspected, confirmed and recited the charter of 8th August 1373 (N° 12), making Bristol a distinct county, likewise the letters patent directing perambulation to be made, setting out the exemplification of the return thereof, which, after the charter, proceeds as follows: "We, by the assent and agreement of the prelates, nobles, great men and commonalty being in our parliament, called together at Westminster

on the morrow of St. Edmund, king and martyr, last past, do for us and our heirs, by virtue of these presents, ratify, approve and confirm for ever to the said burgesses of Bristol, and to their heirs and successors, as well our said charter, and all and singular the grants, liberties and acquittances, and all other things contained and specified in the same charter, as the said perambulation exemplified by our letters patent aforesaid concerning the metes and divisions so made between the aforesaid counties of Gloucester and Somerset, and the said county of Bristol, on the borders and bounds, and those letters, and all and singular the things contained in those letters, as our charter and letters aforesaid more fully testify. In witness," &c.

Ch. 47 Ed. 3.

Sayer, 86.

Richard II. granted three charters of confirmation to Bristol, dated 8th February 1377 (1 R. II.), 28th February in the same year, and 1st of April 1396 (19 R. 2.) By this last charter the steward, marshal, and clerk of the market of the king's household were excluded from exercising their office within the town and liberties of Bristol.

Charters of R. 2.

Edward IV. (*b*) likewise granted three charters

Charters of Ed 4.

(*b*) It appears that charters had likewise been granted by the Lancastrian kings, although not noticed by Ed. IV., as the next charter is a repetition of one granted by Hen. IV.; and the last annuls and regrants one given by Hen. VI. *Vide* Sayer, 96, *in notis.*

Charters of Ed. 4.

to Bristol. One, dated 14th Dec. 1461 (1 E. IV.), which merely inspects and confirms the charter of 19 R. II.; another bears date 1st October in the same year, and exempts Bristol from the jurisdiction of the admiralty, and excludes its officers from entering the town, suburbs, precincts or port of the same *town*, or *the county of Bristol*, by land or by water, for the purpose of doing or performing any thing belonging to the office of admiral there, and grants to the mayor and commonalty, their heirs and successors, that in case any thing should happen belonging to the office of admiral, to be inquired into "within the town, *county*, liberties, port or precincts aforesaid, that a commission should issue, directed to the mayor and recorder of Bristol for the time being, and such other persons as the Crown should appoint, to hear and determine the same. The third charter is granted 12th of February (*c*) in the same year, and commences with reciting and annulling a charter granted to the mayor and commonalty of Bristol by Hen. VI. in the twenty-fourth year of his reign, and then proceeds to grant similar privileges to them; but as these grants and provisions merely relate to corporate

(*c*) The order in which these three charters have been mentioned does not accord with their respective dates; but in this arrangement I have followed that of Mr. Sayer, who in a note in p. 97, states that he has adopted the arrangement of them as mentioned in the charter of 3 Hen. VII.

privileges, the payment of rents and disposal of fines, &c. it is not necessary to state them more at length. Charters of Ed. 4.

Henry VII. granted two charters, the first of which is merely one of confirmation, and bears date 5th February 1487 (3 H. VII.); the second is dated 17th December 1499 (15 H. VII.) and for the better government of the town, enables the mayor and commonalty for the future to have six aldermen and a recorder, and makes provisions for their election, duties and privileges. It likewise directs that the mayor and aldermen shall be justices of the peace, &c. for the "town of Bristol, the liberties and county of the same town, and precincts of the same;" and makes numerous arrangements respecting the administration of justice, disposal of fines, and also contains many corporate regulations, and, amongst others, provides for the election and appointment of two bailiffs, and directs that there no longer shall be "one sheriff of the county of the town of Bristol," but that for the future the two bailiffs should be "sheriffs for the same county of the town of Bristol." Charters of Hen. 7.

Henry VIII. granted a charter of confirmation, dated 10th May 1510, the second year of his reign; as did Edward VI. on the 12th of July 1547. Ch. Hen. 8. Ed. 6.

Queen Elizabeth granted two charters, namely, one of confirmation, in the first year of her reign, 1st March 1559; secondly, one dated 23d July Ch. Eliz.

Ch. Eliz.

1581 (23d year), which reciting the charter of the 15th Hen. VII., appointing and regulating the election of six aldermen, and their duties as justices of the peace, increases their number to twelve (of whom the recorder for the time being is to be one), and makes further provisions for the performance of their duties as aldermen and justices of the peace.

Ch. temp. Jac. 1. 1604.

A charter of confirmation, dated 12th July 1604, was granted by James I., in the second year of his reign.

Charter Car. 1. 1626.

Charles I. granted three charters to Bristol; the first is dated 18th August 1626, in the second year of his reign, and is merely one of confirmation.

Ch. 5 Car. 1. 1629.

By his second charter, dated 13th April 1629, the castle of Bristol was separated from the county of Gloucester, and added to that of Bristol, in the following terms: "Whereas the lord Edward, late king of England, the third, of revered memory, by his letters patent, bearing date at Woodstock on the 8th day of August, in the 47th year of his reign, for causes and considerations specified in the same letters patent, granted to the burgesses of his town of Bristol, and to their heirs and successors for ever, that the said town of Bristol, within the suburbs and precincts of the same, according to its borders and bounds, as they were then limited, should for the future from thenceforth be separated alike, and in all things exempted, as well by land as by water, from the counties of Gloucester and Somerset

Adds the castle of Bristol to the county of Bristol.

Recites ch. 47 Ed. 3.

and that it should be a county by itself, and should be called the county of Bristol for ever: and [whereas] the lord Henry, late king of England, the VIIIth, by his letters patent, bearing date on the 5th day of July, in the 34th year of his reign, willed and ordained that the said town of Bristol, from that time and thereafter for ever, should be a city, and that it should be called, styled and denominated the city of Bristol: [whereas] also he willed and decreed that the county of the said town of Bristol, for the future from that time for ever, should be the county of his city of Bristol, and willed and decreed that from that time for ever it should be styled and denominated the county of his city of Bristol, as by the separate letters patent before mentioned is evident and appears: and [whereas] the same burgesses and mayor and commonalty of the town of Bristol, and the mayor and commonalty of our city of Bristol, have had different liberties, franchises, privileges and acquittances, by virtue of separate letters patent made thereon by our progenitors, and have used and enjoyed the same within the town, city and county aforesaid, and the suburbs, limits and bounds of the same; and the mayor, sheriff, escheator, coroner, justices appointed for the peace, and for felonies, trespasses and other misdemeanors, in the town, county and city aforesaid, and other officers and ministers appointed within the town and city aforesaid, have hitherto executed and exercised those things which belong

Ch. 5 Car. 1.

recites letters patent, 34 H. 8.

Ch. 9. Cir. i.

Castle of Bristol demesne of the crown;

to their separate offices in the town, city and county aforesaid: and whereas our castle of Bristol, which is of our demesne, and parcel of the ancient possessions of our crown of England, and the walls of the same, the ditches and banks surrounding that castle, and moreover all the houses and buildings, courts, orchards, gardens, waters, watercourses, lands, farms and soil, within the circuit, limits or precincts of the same castle, are now situate and are within our county of Gloucester, and are distant from our city of Gloucester by the space of thirty miles; and although situate without our city of Bristol, and the county of the said city of Bristol, and not being part of the same, yet lie and are contiguous to the same city of Bristol, and to the county of the city of Bristol: and whereas we have heard from credible information, that because no justices of the said county of Gloucester dwell near the said castle of Bristol, and the officers of the aforesaid city of Bristol have no authority or jurisdiction to be exercised in that place, many thieves, malefactors, or other disorderly livers, and also divers persons proper and fit for our service in war, when there has been occasion for their service, have fled into the castle aforesaid, and from thence have frequently escaped with impunity, in contempt and derogation of us and our laws, and of justice, and to the grievance, hurt and prejudice of our good subjects: Know ye, that we, considering the premises, and wishing (as far as in us lies we are

and part of Gloucestershire;

but 30 miles from Gloucester, and close to Bristol.

Consequent defeat of justice.

bound) by an opportune and suitable remedy, to provide against all things which may chance to happen to the prejudice of the commonwealth, and of our faithful subjects, or to their hurt, and also at the request of our very well beloved consort, the lady Henrietta Maria, queen, of our special favour, and of our certain knowledge and mere motion, have willed, ordained, appointed and granted, and by these presents, for us, our heirs and successors, we will, ordain, appoint and grant, that our said castle of Bristol, and the walls, banks and ditches of the same, now situate and being within our county of Gloucester, and all the houses, buildings, courts, gates, orchards, gardens, waters, watercourses, lands, farms and soil, being within the circuit, liberties, limits or precincts of the same castle, or being parts of it, from this time and for ever may and shall be, as well by land as by water, wholly exempt and separated from our said county of Gloucester, and from all jurisdiction, power and authority of the sheriffs, escheators, coroners, justices, and other officers, and ministers of us, our heirs and successors, whatever, of the said county of Gloucester, for ever; and that the said castle of Bristol, and all things whatever before mentioned, being within the limits, circuit or precincts of the same, or being part thereof, for the future for ever may be, shall be, shall be taken and accepted, as members, parts and parcels of the aforesaid city of Bristol, and of the county of the same city, and within the county

Ch. 5 Car. 1.

Castle of Bristol separated from Gloucestershire;

and the jurisdiction of the officers of that county;

and added to the county of Bristol.

Ch. 5 Car. 1. of the city of Bristol, and within the jurisdiction, power and authority of the mayors, sheriffs, coroners, escheators, justices, and other officers and ministers of us, our heirs and successors, of the said city and county of the same, and part thereof, for ever; and by these presents, for us, our heirs and successors, we wholly separate for ever our castle of Bristol aforesaid, and all the houses, buildings, courts, orchards, gardens, waters, watercourses, ditches, banks, lands, farms and soil, being within the circuit, liberties, limits or precincts of the said castle, or being parts thereof, from the said county of Gloucester, and from all jurisdiction, power and authority of the sheriffs, escheators, coroners, justices, and other officers whatsoever of the said county of Gloucester; and by these presents, for us, our heirs and successors, we unite and annex for ever our castle of Bristol aforesaid, and all other things whatever before mentioned, being within the limits, circuit and precincts of the same, or being parts thereof, to the said city of Bristol and county of the same city, and to the jurisdiction, power and authority of the mayors, sheriffs, coroners, escheators, justices, and other officers and ministers of the said city and county of the same. And further, of our more ample special favour, and of our certain knowledge and mere motion, we will, and by these presents, for us, our heirs and successors, we grant to the mayor and commonalty of the city of Bristol, and to their suc-

Mayor, &c. of Bristol entitled to the same privileges within the castle as the town and county of Bristol.

Ch. 5 Geo. 2.

cessors, that the said mayor and commonalty, and aldermen, sheriffs, escheators, coroners, justices, appointed and to be appointed for the peace, and other felonies, trespasses, and other misdemeanors in the city of Bristol and county of the same city, and all other officers and ministers appointed and to be appointed within the city of Bristol aforesaid and the county of the same city, and all the burgesses and citizens of the same city, for the future for ever, may have, hold, use, enjoy and exercise, and may be able and empowered to have, hold, use, enjoy and exercise, within the aforesaid castle, the aforesaid liberties and precincts of the same and every part thereof, as many, as great, such, the same, of such sort, and the like rights, jurisdictions, authorities, powers, liberties, franchises, privileges, immunities, quittances, order of drawing out men, power of holding pleas, and to have cognizance of pleas, view of frankpledge, and all things which relate to view of frankpledge, and punishment of all delinquents whatever, as and which they or any of them now have, hold, use, enjoy and exercise, or may be able or empowered to have, hold, use and enjoy and exercise within the said city and county of the same, or either of them, by reason or pretence of any charter, gift, grant or confirmation, or of any letters patent heretofore made, granted or confirmed by us, or by any of our progenitors or predecessors, kings or queens of England, or by any other legal manner, right,

Chap. Earl.

title, usage, prescription or custom whatever; so that no sheriff, escheator, coroner, justice, or officer or minister of us, our heirs or successors, of the said county of Gloucester, shall enter or shall in any way presume to enter the said castle, the liberties or precincts of the same, for the purpose of doing any thing therein which belongs or can belong to their office: and that the men who dwell within the castle and precincts aforesaid for the time being, and who abide in the same place, shall have and enjoy for ever all and singular the liberties, franchises, privileges, acquittances, immunities had or enjoyed by the citizens or by the burgesses of the said city, as well within the said city as elsewhere without the same city, and shall be had, holden and reputed in all things as citizens and men of the same city, as the other citizens and men of that city, as well within that city as without the same; and that the aforesaid mayor and commonalty, and the mayor, sheriffs, escheators, justices, coroners, and other officers and ministers of the aforesaid city or county of the city of Bristol, from time to time shall be alike answerable and attendant in all respects as the citizens, burgesses and men of the same city of Bristol are or ought to be answerable or attendant, although the said castle or other premises so united (as is before mentioned) to the said city and county of the said city of Bristol, be, or any of them be, of our demesne, or parcel of the possessions of our crown, and although the men there

Persons residing within the castle of Bristol entitled to the same franchises as the citizens, both within and without the city.

living or inhabiting be our tenants or abiding within our castle or our fee [strictly commanding all persons that they do not counteract the premises in any respect] because express mention be not made in these presents of the true annual value or of any other value, or of the accuracy of the premises or any of them, or of any other gifts or grants heretofore made by us, or by any of our progenitors or predecessors, to the said mayor and commonalty of the city of Bristol aforesaid; or any statute, act, ordinance, provision, proclamation or restriction to the contrary thereof heretofore had, made, published, ordained or provided, or any other thing, cause or matter whatsoever in any respect notwithstanding." In witness, &c. Ch. 6 Car. 1.

The third charter of Car. I. bears date 26th October 1630; and by it, in consideration of 959*l.* and a fee farm rent of 40*l.* per annum, the king grants to the mayor, burgesses and commonalty of Bristol the castle of Bristol, with all its rights, members and appurtenances, and the premises, &c. within the same. Ch. 6 Car. 1. 1630.

Charles II. granted a charter of confirmation, dated 22d April 1664. Ch. 16 Car. 2. 1664.

In consequence of the quo warranto of 1682, all former privileges, &c. were surrendered in 1683; and on the 2d of June 1684 a new charter was granted, which was also abrogated, and the old privileges again restored by the proclamation of James II. in 1688.

Ch. temp. Anne.

In 1710, queen Anne granted a charter to the mayor, burgesses and commonalty of the city of Bristol, throughout which Bristol is recognized as a county of itself; but as this charter relates entirely to corporate matters, it is not necessary to take further notice of it.

Lord lieutenant.

The lord lieutenant of Gloucestershire is also appointed for the county of the city of Bristol.

Justices of the peace.

The mayor and aldermen are the justices of the peace.

Municipal government.

The municipal body consists of a mayor, recorder, twelve aldermen, and forty-two common councilmen.

Returning officers.

The sheriffs are the returning officers.

Right of election.

The right of election is in the freemen and freeholders (*d*).

Freeholds situated within the county of the city of Bristol do not confer votes either for the county of Gloucester or that of Somerset.

Prynne Brev. Parl. v. 3. p. 314.

Prynne observes, that "Bristol was antiently only a borough town (yet of great note, trade, antiquity, wealth and renown), having only liberties and officers within itself, and parcel of the county of Glocester, whose sheriffs issued precepts always to them to elect two burgesses, whose names and manucaptors were retorned by them to the sheriff of Glocester, and endorsed by him on the back of the writs for Glocester-

(*d*) It seemed to be taken for granted to be in the freeholders of forty shillings per annum, and the free burgesses. Simeon, Appendix, p. 56; 1 Doug. 260.

shire, till the 47th year of king Edward III." The same author gives a list of the returns made by the sheriffs of Gloucester for the borough of Bristol, from the 26th Ed. I. to 46th Ed. III. and from the 47th Ed. III. another list of returns made by the sheriff of Bristol.

Right of election.

Prynne Brev. Parl. v 3. 317; and 4th Reg. 935.

Ib. 353.

The last return of burgesses for Bristol made by the sheriff of Gloucester is as follows: "Nomina burgensium pro communitate burgi Bristol electorum essend ad dictum parliamentum Walterus Derby, Johes Stoke."

Ib. 357.

In the same year that Bristol was made a county of itself, namely, 47th Ed. III. a writ issued directed to the sheriff of Bristol, requiring him "quod de com. prædict. duos burgenses de discretioribus et magis sufficientibus, qui in navigio et exercitio merchandisarum notitiam habent meliorem, eligi, et eos ad dictos diem et locum venire fac. Ita quod iidem burgenses plenam et sufficientem potestatem pro se et communitate com. prædict. ab ipsis habeant ad faciend. et consentiend. &c." On the dorse of which writ is the following return: "Virtute istius brevis eligi et venire feci ad præsent. parliamentum domini regis apud Westm. in crastino sancti Edmundi regis prox. futur. duos burgenses de discretioribus et majis sufficientibus, qui in navigio et in exercitio merchandisarum notitiam habent meliorem, viz. Walterum Derby et Thomam Beauhine."

Ib. 357.

Return, 13th Hen. 4. of burgesses to serve as well for knights as burgesses.

The next return given by Mr. Prynne bears date the 26th of October, 13th Hen. IV. and

Return, 13th Hen 4.

appears to be the first instance in which a return was made of burgesses to serve as well for knights of the county of Bristol (*e*) as for burgesses for the town, according to the provisions of the charter of 47th Ed. III. as follows: "Hæc indentura facta inter Johem Spyne, vic. com. Bristol ex una parte, et Thomam Young majorem villa Bristol, Thomam Dorys," (and twenty-nine others mentioned by name,) "ejusdem villæ ex parte altera, testatur, quod virtute brevis domini regis uni parti harum indent. in com. tent. apud Bristol." (26th October, 13th Hen. IV.)

Vide charter 47 Ed. 3, ante, p. 57.

"Coadjunatis discretioribus, et majis sufficientibus burgensibus dictæ villæ, Thomas Norton et David Dudbroke, mercatores et burgenses villæ Bristol. sunt electi essend. in parliamento domino mediente tenend. apud Westm. in crastino Animarum prox. futur. *ad respondend. tam ut milites pro. com. Bristol, quam ut burgenses pro burgo villæ prædictæ,*" &c. &c. "In cujus rei testimonium tam prædic. vic. quam præfat. major et

(*e*) In the list of the knights of shires, at the first parliament in the 5th R. II. given by Prynne among the writs for the expenses of knights, and 4th Reg. 352; and at the end of the roll is the following entry, "Elias Spelly, Johes Stoke, mil. com. Bristoll, (here added without any sum or number of days.)" A similar entry is made at the end of the roll of the second parliament of that year, as also in that of the second parliament in 6th R. II. These are the only instances in which such entries occur in Prynne. The members for Bristol are not inserted by him among those for boroughs.

omnes et singuli probi homines supradicti iis indenturis, sigilla sua alternatim apposuerunt. Dat. Bristol, die et anno supradictis." The above form of return continued to be used almost verbatim up to the 23d Hen. VI. But in the 4th Hen. VI. a writ issued to the sheriff of Bristol, commanding him to return two burgesses for the town of Bristol as burgesses only, whereupon the burgesses presented a petition (*f*) to parlia-

Return, 13th Hen. 4.

Prynne Brev. Parl. 359.

(*f*) Priount lez Coẽs de cest p̃sent Parlement de considerer, coment le Roy Edward Tierce, ꝑgenitour nr̃e Sr̃ le Roy q'or est, p sez Lr̃es Patentz, del date de septisme jour d'Aust, l'an du regne le dit roy Edward quarrant septisme, graunta et confirma pur luy et sez heirs, a lez Burgeys de Bristuyt, lour heirs et successours, qe la Ville de Bristuyt, ove lez suburbes et purceynt d'ycelles, solonq; lez fynes et boundes sur certein auctorite ent dont limitez; quelle Ville, suburbes et Purceynt, furent assiz ꝑcell en le Counté de Gloucestr' et ꝑcell en le Counté de Soms'; serrount sev'ez et exemptz dez ditz Countees p tr̃e et eawe, et q'il serra Counte p soy, et nosme le Counte de Bristuyt; et qe la dite Ville ne serra charge de maunder a lez Parlementz de dit Roy Edward, ou sez heirs, sinon deux homes, lez queux come Chivalers del Counte de Bristuyt, sin̄ come Burgeys dez Ville et Burgh' de Bristuyt pur mesmez lez counte, Ville et Burgh', en ycelles Parlementz serrount tenuz de respoundr'. Et la quelle Chr̃e, ove toutz lez Grauntz et Libertees en ycell contenuz, en le Parlement le dit Roy Edward tenuz a Westm', lendemain de Seint Edmond Roy et Martir, pschain aps le dit septisme jour d'Aust, faist

Rot. Parl. v. 4, p. 315, No. 15; A. D. 1425. 4th Hen 6.

Return, 4th Hen. 6.

ment, stating, that by the charter of 47th Ed. III. which was confirmed by parliament, Bristol had

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ratifie et confirme p auctorite de mesme le Parlement, come p lez Lr̃es de Confirmaccion de nr̃e Sr̃ le Roy q'or est dez ditz Lr̃es Patentz a nous jurez pleinement appiert; ap̃s lez faisauntz des queux Lr̃es Patentz, a ch̃un Parlement tenuz, tan q̃ a cest p̃sent Parlement, deux hom̃es ount responduz p auctorite dez ditz Lr̃es Patentz, sib̃n come Chivalers pur le dit Counte de Bristuyt, come Burgeys pur lez Ville et Burgh. Et ore est ensy, qe Brief issist a Viscount del dit Counte de Bristuyt, d'eslier et faire venir a cest p̃sent Parlement deux Burgeys, p noun des Burgeys soulement pur la Ville de Bristuyt, contre lez Lib̃tees et Fraunchises suis ditz; p vertue du quelle Brief, le dit Viscount ad retourne en cest p̃sent Parlement, Henry Gildeney et Joh̃n Langley, come Burgeys pur la dite Ville de Bristuyt soulement, p ensy q̃ les ditz Henry et Joh̃n ne purront estre resceu d'apparer et respoundr' en cest p̃sent Parlement, come Chivalers pur le dit Counte de Bristuyt, sib̃n come Burgeys pur lez ditz Ville et Burgh, a desheritaunce dez toutz lez Burgeys enhabitantz deing le dit Counte de Bristuyt, de lour Lib̃te et Fraunchise suis ditz: et sur ceo, d'ordiner p auctorite de cest p̃sent Parlement, qe lez ditz Henry et Joh̃n purrount apparer et respoundre en mesme cest Parlement, pur le Counte de Bristuyt, come Chivalers, et pur lez ditz Ville et Burgh come Burgeys, accordant a lez Lib̃tees et Fraunchises suis ditz, et qe desore en aṽnt, a ch̃un Parlement a tenir, Briefs isserount al Viscount del dit Counte de Bristuyt, d'eslier et fair venir deux hom̃es, queux come Chivalers pur le Counte de Bristuyt, sib̃n come Burgeys pur lez ditz Ville et

been made a county of itself, distinct from those of Gloucester and Somerset, whereby it was granted that two men should answer as well as knights for the county as burgesses for the borough, but that, in consequence of the last writ, their representatives could then only answer as burgesses for the borough, which was a violation of the privileges, &c. of the burgesses inhabiting the said county of Bristol, and praying that the persons returned in virtue of that writ may be enabled, by parliament, to answer as knights for the county as well as burgesses for the borough: to which it was answered, that their privileges should not be prejudiced by the writ in the said petition mentioned, nor by the return and appearance of their burgesses in parliament in consequence thereof.

Return, 4th Hen. 6.

Burgh, en ycelles Parlement responderount, acordantz a les Liꝑtees et Franchisez suis ditz: nient obstant le dit Brief retourne en cest p̃sent Parlement, et l'appance sur ycell' contrarie a lez Liꝑtees et Fraunchisez suis ditz.

Le Roi, p advys des Seigñrs Espirituelx et Temporelx, et le request des Coẽs de cest p̃sent Parlement, voet et g̃nte q p cause ou colour de l'isser de Brief, direct al Viscount de Bristoll - - - - - - Parlement, come ceste Peticion fuit mencion, ou del contenue ou retourne d'icell, ou p l'apparence des Burgeys de la Ville de Bristoll en mesme le Parlement, p v̄tue du dit Brief, nulle p̃judice aveigne al Burgeis de mesme la Ville, countre la forme de lour Chartre.

Responsio.

Return, 7th Hen. 6.

Hen. VI. having, in the 7th year of his reign, confirmed the charter of 47th Ed. III. the form of the writs was thereupon altered both at the beginning and close, and is similar to that of 25th Hen. VI. hereafter mentioned, except as to the recital of the statutes therein contained. The form of the return, also, to these writs, appears to have been altered, in being made by the mayor and commonalty of Bristol in the guildhall, instead of by the sheriff in the county court, as follows:

Vide post.

Return, 14th Hen. 6. Ib.

"Noverint universi per præsentes, quod nos major et communitas villæ Bristoll. unanimi assensu nostro et consensu constituimus, et in loco nostro posuimus, dilectos nobis in Christ. Thoman Fische et Thoman Thony, comburgenses nostros, tam ut milites pro com. Bristol, quam ut burgenses villæ et burgi Bristoll, pro eisdem com. villa et burgo ad essend. ad parliamentum," &c. "In cujus rei testimonium sigillum nostrum commune presentibus est appensum. Dat. in Guyhald Bristolliæ," 26th September, 14th H. VI.

Writ, 25 Hen. 6. Ib. 360.

In the 25th year of Hen. VI. the following writ issued, directed to the sheriff of Bristol:

"Henricus Dei gratia, &c. vic. Bristoll. salutem: Cum inter cæteras libertates et quietancias dilectis nobis burgensibus villæ Bristoll, per cartas progenitrorum nostrorum quondam regum Angliæ, quas confirmavimus, concessas, consessum sit eisdem, quod dicta villa aliquatenus non oneretur ad mittend. ad parliamentum Domini E. nuper

regis Angliæ progenitoris nostri, vel heredum suorum, nisi duos homines duntaxat prout ante octavum diem Augusti, anno regni ejusdem progenitoris" (17) "fieri consuevit, qui quidem duos homines tam ut *milites com. Bristoll.* quam *ut burgenses villæ burgi Bristoll.* pro eisdem com. villa et burgo in parliamentis illis respondere teneantur, prout in carta ipsius progenitoris nostri et confirmatione prædictis plenius continetur. Et quia pro quibusdam arduis et urgentibus negotiis, nos, statum et defensionem regni nostri Angliæ et ecclesiæ Anglicanæ concernentibus, quoddam parliamentum nostrum apud villam nostram Cantebr. in die sanctæ Scholasticæ," (10th Feb. prox. futur.) "teneri ordinavimus et ibidem cum prelatis," &c. "colloquium habere et tractatum. Ac in statuto in parliamento nostro apud Westm," (8 H. VI.) "inter cætera provisum et ordinatum existit, quod milites com. infra regnum nostrum Angliæ, eligendi ad veniendum ad parliamenta ex tunc tenenda, eligantur in quolibet com. per homines in eodem com. commorantes et residentes, quorum quilibet habeat liberum tenementum ad valorum quadraginta solidorum per annum ad minus ultra reprisas. Et quod illi qui sic eligendi fuerint sint similiter in eisdem com. commorantes et residentes; quodque illi qui habuerint majorem numerum ipsorum, qui quadraginta solidos per annum et ultra expendere possint, ut prædictum est per vicecomites cujuslibet com. per indenturas inter ipsos vicecomites et præfatos electores

Writs agth. Hen. 6.

Writ, 28th Hen. 6.

inde conficiend sigillatus milites pro parliamento retornentur. Et quod quilibet vic. Angliæ habeat potestatem authoritate parliamenti prædicti examinandi super sancta Dei evangelia quemlibet hujusmodi electorem quantum per annum expendere possit. Et si aliquis vic. milites de veniendo ad parliamentum in contrarium ordinationis prædictæ retornaverit, habeant justic. ad assisas in sessionibus suis assisarum potestatem authoritate supradicta de et super hoc inquisitionem capiendi, per quam si id coram eisdem justic. comperi, &c. vic. inde debite convinci contigerit : tunc inde vic. pœnam centum librarum nobis solvendam incurrat, et imprisonetur per annum absque traditione in balliam aut manucaptionem, et quod milites pro parliamento in contrarium ordinationis prædictæ retornati vadia sua perdant, prout in statuto prædicto plenius continetur. Ac insuper in statuto in parliamento nostro apud Westm. ultimo tento edito inter cætera ordinatum existit, quod milites com. pro parliamentis ex tunc eligendi sint milites notabiles in eisdem com. pro quibus sic eligentur, seu saltem notabiles armigeri vel homines generosi de communitate eorundem com. qui habiles sint milites fieri, et nullus homo de gradu valetti et gradu inferiori de essendo miles hujusmodi existant prout in eodem statuto plenius continetur. Tibi præcipimus firmiter injungentes quod facta proclamatione in prox. com. tuo post receptionem hujus brevis tenend. de die et loco prædictis, *duos homines qui tam ut milites* com. Bristol,

quam ut *burgenses villæ et burgi Bristol* pro eisdem com. villa et burgo in parliamento nostro prædicto libere et indifferenter per illos qui electioni illi interfuerint juxta formam statutorum prædictorum ac cujusdam alterius statuti inde dudum editi et provisi, ac libertatum et quietanciarum prædictarum eligi, et nomine eorundem hominum sic eligendorum in quibusdam indenturis inter te et illos qui hujusmodi electioni interfuerint inde conficiend. sive hujusmodi eligendi præsentes vel absentes fuerint inseri eosque ad dictos diem et locum venire facias. Ita quod prædicti homines plenam et sufficientem potestatem pro se et communitate com. villæ et burgi prædictorum habeant ad faciendum et consentiendem," &c. &c. Writ, 25th Hen. 6.

To this writ the following return was made:— "Hæc indentura facta Bristol." (31st January, 25th Hen. VI.) "inter Johem Troyt, vic. com. Bristol. ex una parte, Ricum Forster, majorem, ejusdem villæ, Johem Burton, and thirty-two others mentioned by name, burgenses et mercatores in villa Bristol, *commorantes et residentes, quorum quilibet habet liberum tenementum ad valentiam quadraginta solidorum annum ultra repris. in eadem villa*, ex parte altera, testatur, quod virtute brevis domini regis uni parti harum indentuarum consut. apud Bristol, (31st January,) in pleno com. ibidem tent. coadunat. discretioribus et magis sufficient. burgens. villæ Bristoll. Thomas Young et Johes Sharp, jun. mercatores ejusdem villæ in eadem villa commorantes et residentes sunt electi Return, 31 Jan. 25th Hen. 6. Prynne, 362.

Return, 31 Jan. 25th Hen. 6.

essend. ad parliamento domini regis tenend. apud Cantabr. (10th Feb. prox. futur.) ad respondend. in parliamento *tam ut milites pro com. Bristol, quam ut burgenses pro burgo et villa prædicta juxta formam cartæ domini Edwardi* nuper regis Angliæ progenitoris domini nostri regis nunc, burgensibus villæ prædictæ concess. et per dominum nostrum regem nunc confirmat. ac juxta formam cujusdam alterius statuti domini nostri regis nunc inde dudum editi ac statuti," (8th Hen. VI.) "nunc in dicto brevi similiter content. editi. Nec non in statuto in parliamento domini nostri regis nunc ultimo tento editi. Qui quidem Thomas Young et Johes Sharp, sunt præmuniti essend. et comparend. in parliamento prædicto ad diem et locum prædict. ex consensu et assensu dicti majoris, et proborum hominum supradict. qui majorem numerum omnium illorum qui quadraginta solidos per annum in claro expendere possunt habuerunt, ac totius communitatis villæ prædictæ ad respondend. faciend. et consentiend. in omnia et singula quæ in dicto parliamento contigerint ordinari, ac omnia et singula quæ dictum breve in se exigit et requirit. In cujus rei testimonium, tam prædictus vic. quam prædictus major et singuli probi homines supradicti sigilla sua præsentibus apposuerunt. Dat. Bristol. die et anno supradictis."

A return, in terms somewhat similar, was made 27th Hen. VI. as follows :—

Return, 31 Jan. 27th Hen. 6. Prynne, 364.

"Hæc indentura facta inter me, Willum Pavy,

vic. Bristoll. ex parte una, et Johem Burton," (and twenty-four others mentioned by name,) "ex parte altera, testatur, quod virtute istius brevis domini regis mihi præfat. vic. direct. ad com. meum tent. apud Bristoll. in guildhalda ejusdem villæ die Lunæ prox. post festum Conversionis Sancti Pauli ultimum præterit. proclamari feci dictum breve juxta tenorem ejusdem ad quem diem et locum comparuerunt coram me præfat. vic. in pleno com. prædicto præfat. Johes, &c. ad duos homines *tam ut milites com. Bristoll. quam ut burgenses villæ et burgi Bristoll.* pro eisdem com. villa et burgo pro quibusdam arduis negotiis," &c. "colloquium habere et tractatum juxta libertates et quietancias burgensibus villæ præd. per cartas progenit. suorum quondam regum Angliæ, quas dictus dominus noster rex confirmavit concess. prout in dicto breve mihi præfat. vic. ante diem confectionis hujus indenturæ deliberat satis liquet. Qui quidem Johis Clemens et omnes alii prænominati sunt commorantes et residentes infra villam et com. Bristol. prædict. et quadringenta solidos per annum ad minus ultra expens. expendere possunt juxta tenorem brevis prædicti; et in majore numero eligerunt Thomam Young et Johem Sharpe juniorem, commorantes et residentes infra villam et com. prædict. notabiles homines generosos de nativitate de villa prædicta et habiles existend. milites, qui tam ut *milites com. Bristol quam ut burgenses* villæ et burgi Bristol. pro eisdem com. villa et burgo pro negotiis prædictis

Return, 31 Jan. 27th Hen. 6.

Return, 31 Jan. 27th Hen. 6.

in parliamento supradicto cum prælat." &c. &c. "colloquium habere et tractatum secundum tenorem brevis prædicti, et quod insuper Johis Clemens et omnes alii prænominati dederunt et per presentes dant et concedunt præfat. Thomæ Younge, Johi Sharpe, jun. plenam et sufficientem potestatem pro eis et communitate villæ et burgi prædictorum ad faciend. et consentiend." &c. "In cujus rei, &c. Dat." 31 January, 27th Hen. VI.

Return, 28th Hen. 6. Prynne, 365.

28th Hen. VI. the following return was made: "Hæc indentura facta apud Bristoll. inter me Thomam Hore, vic. ex parte una, et Willum Cunnyngs," (and twenty others mentioned by name,) "mercator. ex parte altera, testatur quod postquam istud breve mihi deliberatum fuit, ad com. meum tentum apud Bristol, die Lunæ prox post Festum Animarum," (28th Hen. VI.) "compaverunt coram me præfat. vicecomite omnes personæ prænominatæ et ibidem in dict. præsent. plen. com. eligerunt Thomam Russell, gent. et Johem Sharp, juniorem, de eadem, gentleman, *tam ut milites quam ut burgenses* villæ prædictæ. Et ego præfat. vic. domino nostro regi certifico quod dict. milites et burgenses in dic. com. electi sunt, commorantes et residentes infra villam burgum et com. prædict. et quilibet eorum habet liberum tenementum infra eadem ad valorem quadraginta solid. per annum ad minus ultra repris, prout per idem breve mihi præcipitur. In cujus rei testimonium ego præfatus vicecomes uni parte harum indentur. sigill. meum apposui, et prædict. Willus

Cunnings et omnes alii prænominati alteri parti indentur. prædict. sigilla sua apposuerunt. Dat. Bristol die et anno prædict. Return, 28th Hen. 6.

"The indenture to another writ, an. 38 H. VI. recites the election to be made per Thomam Rogers, majorem, &c. burgenses in villa Bristol, *commorantes et residentes quorum quilibet habet* 40 *s. per annum*, qui eligerunt Johem Shippeward et Philipum Meed, burgenses ejusdem villæ et homines generosi de nativitate de eisdem com. et burgo et in eadem villa commorantes et residentes, *tam ut milites pro com. Bristol quam ut burgenses pro villa* et burgo Bristol," &c. Return, 38th Hen. 6. Prynne, 366.

"Similis indentura, 38th Hen. VI. apud Leominster per Willum Toder, &c. burgenses in villa Bristol, commorantes et residentes, quorum quilibet habet 40 *s.* per annum, &c. eligerunt J. S. et P. M. tam ut milites quam ut burgenses, &c.

"The indentures of 6th and 12th Ed. IV. run in the same form and words." Ib. 367.

"From all which it is apparent, says Prynne,

1st, "That those two elected for the county and town of Bristol (nor made a city till about 33d Hen. VIII. when there was a bishop's see erected in it) were elected and returned by the king's charters and writs, as well as knights for the county, as burgesses for the borough of Bristol.

2d, "That none were elected knights and burgesses for Bristol but merchants and persons of quality, residing and dwelling therein at the time of their election, not strangers or non-residents.

Right of election.

3d, "That none ought to have voyces in the election of these knights and burgesses of Bristol but the more discreet and sufficient burgesses residing and dwelling within the city, having a freehold within the county of the city of 40 *s.* a year, or more, besides reprisals; not the popularity and all the freemen of the town, as some of late have pretended, courting and calling them in to give their voyces to over-vote the mayor, aldermen, common counsell and freeholders of the county and town, when they could not gain a majority of their voyces, in direct contradiction to all these antient indentures, and the statutes recited in the precedent writs, to which they are annexed, to the great disturbance of the elections there lately made, and of the peace and government of the city. Which innovations, I presume, the magistrates thereof will prevent for the future, upon perusal of these presidents and indentures; for whose honour, peace and information I have collected and published the premises in a distinct section, out of my good affection to their city, wherein I had part of my education, and my extraction out of it: my grandfather, Mr. Erasmus Prynne, (a great acquaintance of famous Bishop Jewels, who much delighted in his company,) being sometimes member of it, and some of my kindred chief magistrates in it."

The following bye-law of the corporation, dated the 1st of Car. I, shows that the members continued to be elected in the same manner.

Right of election.

"It is enacted, that whensoever any writ for any election of knights, citizens or burgesses for the parliament, shall come to the sheriffs of this city, the election shall be made by the mayor, aldermen and common council for the time being, and by the freeholders resident within the said city, and by none others." Mr. Barrett, after noticing this bye-law, observes, "but since the Restoration, the returns often mention the election to be made by the citizens at large, to the number of two thousand and upwards; and the right of election is now, and has been (as far as the memory of man can go) in the mayor, aldermen, common council and all the burgesses, (except such as receive publick relief from parishes or alms-houses,) and all the freeholders of the county of Bristol, qualified according to law." The same author also gives a list of sixteen different contested elections between the years 1679 and 1780, at which the last-mentioned right of voting was agreed to and acted upon; and such likewise was taken as the right both at the election of 1774, and the hearing of the petition arising out of that election in 1775.

Barrett, p. 142.

1 Doug. Elect. Repts. 260.

But although the right of the freeholders to vote has been constantly admitted without dispute, it is not often exercised, most freeholders in Bristol being freemen also, who usually vote in that right.

COUNTY OF THE CITY OF CANTERBURY.

CANTERBURY is one of our most ancient cities. In the time of the heptarchy it was the capital of the kingdom of Kent, and as early as the year 596 the seat of the metropolitan. Immediately after the Norman conquest this city was held by the archbishop in fee-farm, but by William Rufus was granted to archbishop Anselm in fee. In 780 Canterbury was governed by a provost, præfect or portreeve; was subject to the rule of a similar officer subsequently to its being granted to the archbishops, and so continued till the 18th Hen. III, when that king granted the city to the citizens in fee-farm, with power yearly to choose bailiffs of their own, who remained the chief magistrates, until the charter of the 26th Hen. VI. enabled the citizens to elect a mayor, and incorporated them by the style of "the mayor and commonalty of the city of Canterbury."

Somner's Ant. Cant. p. 2.

Ib. 229.

Ib. 364.

From the preamble to the charter of 26th Hen. VI, it appears that the city of Canterbury had a corporation by prescription.

This city was separated from the county of

Kent, and made a distinct county, by a charter of the 1st Ed. IV, which likewise inspects and confirms the grants of several preceding charters:

1st, A charter of Rich. II. (*a*). Ch. Rich. 2.

2d, One of Ed. III. Ch. Ed. 3.

3d, A second charter of Ed. III. 2d Ch. Ed. 3.

4th, One of the 18th Hen. III, by which the city of Canterbury is granted to the citizens at a fee-farm for 60 *l.* a year, with licence for them and their heirs to "elect from themselves their bailiffs of the city of Canterbury." Ch. 18 Hen. 3.

5th, A charter bearing date 4th of October, 40th of Hen. III, which inspects and confirms, Ch. 4th Oct. 40th Hen. 3.

6th, One of H. II, confirming former privileges; granting freedom from tolls, and regulating the courts and legal proceedings of the city. Ch. Hen. 2. Freedom from tolls, &c.

7th, One dated 21st of October in the same year, by which king Hen. III. grants to the "citizens of Canterbury, that they and their heirs for ever shall have the return of all our writs touching our city of Canterbury, and the liberty of the same city, as well within the suburbs as within the city;" also, that no citizen should be impleaded without the walls, or tried by any other than his fellow citizens, unless the commonalty of Ch. 21st Oct. 40th Hen. 3. Return of writs granted to the citizens. No citizen to be impleaded without the walls;

(*a*) These extracts are taken from the inspection and recital of former charters in that of 1st Ed. IV, set out in the translation of that charter produced before the committee.

Ch. 40 Hen. 3.

or imprisoned but in the city prison.

No sheriff, &c. to enter but in default of the bailiffs.

the city be concerned; also, that "no one of the city or portsoke" should be imprisoned elsewhere than in the prison of the said city; "and that no sheriff or constable, or other our bailiff or minister, shall make any summons in the city aforesaid for our debts, or other things pertaining to the liberty of the same city, unless by default of the bailiffs of the said city." This charter likewise notices and confirms other charters of confirmation granted by Hen. III, namely, one granted in the

Confirmation of former charters.

Ch. 26 Hen. 3. (8th,) 26th year of his reign; another in the

22 Hen. 3. (9th,) 22d; also one in the

3 ditto. (10th,) 3d. It also inspects and confirms

Ch. 5th Dec. 1 Hen. 4. (11th,) A charter granted by Hen. IV. to the bailiffs and citizens of the city aforesaid, "confirming that of Rich. II, excluding the clerk of the market, &c. either in the absence or presence of the king, and empowering the bailiff of the city to perform that office within the same; saving to the chancellor, &c. a right to enter into the city twice in the year to inquire into the defects of the same, belonging to the royal cognizance; granting to the bailiffs and citizens, &c. that the bailiffs should have cognizance of all pleas, &c. "arising within the precinct of the said city and suburb thereof;" also, the receipt of all fines, &c. in aid of payment of their fee-farm rent, "except, nevertheless, pleas upon actions arising within the precinct of the hamlet of Stablegate, within the city aforesaid, which is parcel of the vill of Westgate, without the same city, which said vill

Bailiff of the city to be clerk of the market.

Bailiff and citizens to have cognizance of pleas.

Grant of all fines, &c.

Exception of the hamlet of Stablegate, &c.

and hamlet are within the fee and lordship of the archbishop of Canterbury; and also the fines, issues and amerciaments, as well of tenants as of resiants, within the lands and fees of the archbishop aforesaid."

Ch. 1 Hen. 4.

Exception in favour of the lands of the archbishop.

12th, That of 26th Hen. VI, granted to the "bailiffs and citizens of the city aforesaid," confirming the last-recited charter; reciting that the "city of Canterbury was one of the most ancient cities of the kingdom of England, and from time whereof the memory of man there was not, had been, and then was, incorporated of two bailiffs and one perpetual commonalty of the city aforesaid;" and granting "to the then citizens of the city aforesaid," that the citizens of the said city, and commonalty of the same, and their heirs, &c. "in place of the bailiffs of the said city," "might elect one person from themselves," &c. to be mayor of the said city; and that from the said feast of the Exaltation of the Holy Cross next ensuing, they should be incorporated of "one mayor and one perpetual commonalty," who should hold the said city, together with all liberties, &c. enjoyed by the bailiffs and citizens; and have, by their bailiff, the return of all writs within the city, liberty and suburb; excluding all other sheriffs, &c. from entering to execute process, &c.; enabling the mayor and citizens to purchase land, and to be impleaded by the name of the mayor and commonalty of the city of Canterbury; empowering the mayor to hold pleas in the same

Ch. 26 Hen. 6.

Canterbury, an ancient city;

incorporated from time of memory of two bailiffs, &c.

Power given to elect a mayor in place of the bailiffs.

Mayor, &c. to have the return of writs, &c. by their bailiff.

Mayor, &c. enabled to purchase land.

To be impleaded by the style of the mayor and commonalty of the city of Canterbury.

Mayor to hold pleas, &c.

Ch. 26 Hen. 6.

Mayor keeper of the peace, to the exclusion of all county and other justices.

Mayor may appoint a deputy, make bye-laws, and have a coroner;

to the exclusion of the coroners for the county of Kent.

manner as the bailiffs; creating him keeper of the peace within the city, and excluding all justices of the county of Kent, as well as others; discharging the citizens from serving on juries out of the city; giving a power to appoint a deputy mayor, and make bye-laws; and conferring on the said mayor and commonalty a coroner, to be from thenceforth coroner within the said city, and to execute his office as fully as any coroner in any county of the kingdom, precluding the coroners of the county of Kent from thereafter entering within the said city, to do anything appertaining to their office.

Ch. 31 Hen. 6.

13th and lastly, a charter granted by the same king, in the 31st year of his reign, confirming the privileges, &c. granted by the last charter; but enumerating with greater particularity the regulations to be observed with respect to the police, laws and government of the said city; also granting a fair to be holden on the 4th of August. "Provided always, that the same grant or confirmation of the said Henry VI, late king as aforesaid, should not be nor come to the prejudice of any (*b*) jurisdiction or liberty of the archbishop, or of the archbishopric of Canterbury, of the prior and convent, or of the priory of the cathedral church of Christ Canterbury, or of the abbot and

Exception in favour of the jurisdiction, &c. of the archbishop, &c.

(*b*) This exception appears to be continued in all subsequent grants; and similar exceptions in favour of the church will be found in the charters granted to Lichfield, Lincoln, &c.

convent of the monastery of St. Augustine near Canterbury."

Ch. 31 Hen. 6.

The charter of Ed. IV. then confirms all preceding charters, and all privileges, liberties and franchises, &c. granted thereby: next makes some further regulations respecting the elections of the mayor and coroner, reciting that the charter of Hen. VI. had not directed how the last-mentioned officer ought to be elected, and empowering the mayor and aldermen, at their pleasure, to elect one fit person of their fellow citizens to be coroner: also grants a certain remission in the amount of the fee-farm rent payable by the city, confirming the former grants to the citizens of all fines, &c.

Ch. 1 Ed. 4.

Confirmation of former charters.

Elections of mayor and coroner.

Remission of part of fee-farm rent.

Confirmation of the grant of fines, &c.

"And moreover, for the greater tranquillity, advantage and increase of our citizens of the city aforesaid, of our more ample grace, and of our certain knowledge and mere motion, we have granted, and by these presents do grant and confirm for us, our heirs and successors for ever, to the now mayor and commonalty of the city aforesaid, their heirs and successors, that the city of Canterbury aforesaid, with a certain suburb without the Northgate of the said city, and the suburbs without the Quenyngate, Burgate, Newyngate, Redyngate, Wargate and Westgate of the same city, and that parcel of the hamlet or vill of Wynchepe, with the other suburbs, and all the precinct of the city, suburbs and parcel aforesaid, which now are or from old time have been of and within the

Canterbury made a county of itself.

Ch. 1 Ed. 4.

liberty and jurisdiction of the aforesaid city (the hamlet of (*c*) Stablegate in the same city, parcel of the vill of Westgate within the same liberty, which is of the fee and liberty of the archbishop of Canterbury, and our castle of Canterbury, wholly excepted), which said city, suburbs, parcel and precinct, except before excepted, now are within and [parcel] of the county of Kent, shall from the feast of St. Michael the archangel next ensuing, be one entire county by itself, corporated in deed and name, and distinct and wholly separated from the said county of Kent for ever, and not parcel of the same county of Kent, nor of the same county; and that the same county, so corporated, and distinct and separated from the county of Kent, shall for ever be named, called and entitled the County of the city of Canterbury."

Bailiffs to be sheriffs.

Also, that the bailiff or bailiffs of the said city should, "from the aforesaid morrow of St. Michael,

(*c*) At the time of the survey of Domesday, Canterbury, like Rochester and many other towns, was accounted a hundred of itself, by the name of the hundred of Canterbury; and it probably so continued till this charter of king Ed. IV. made it a county of itself, exclusive from the jurisdiction of the county of Kent, in which it was before comprehended; but although only the hamlet of Stablegate within the city, parcel of the vill of Westgate without the city, and the castle of Canterbury, were excepted from this new county, yet the archbishop's palace, the vill of Christchurch, and other religious foundations, likewise claimed an exemption from it. Hasted's Hist. Kent, v. 4, p. 394, *in notis*.

be sheriff or sheriffs of the said county of the city of Canterbury for ever, viz. every of them for the time which he shall be in the office of bailiff there; and nevertheless that the bailiffs of the said city, and the office of bailiff there, shall be made, exercised and executed according to the form and effect of the franchises and liberties of the said city, by force of the grant aforesaid, or of the custom heretofore used there, our present grant in anywise notwithstanding." The sheriff is likewise directed, within four days after his election, to take the oaths before the mayor or his deputy, who is thereupon, under the seal of his office, to certify his name to the Chancery; also, to hold a county court on Thursday, and perform and do all things pertaining "to the office of sheriff in the said city, suburbs, parcels and precincts thereof, except before excepted," as fully as any other sheriff of the kingdom of England. And that we, our heirs, &c. shall cause all writs, &c. "from whatever cause or thing arising, within the city, suburbs, parcels and precincts aforesaid, except before excepted, and which ought to be directed to the sheriff of the county of Kent, and by him to be served and executed, if the same city, suburbs, parcels and precincts, except before excepted, had not been made an entire county of itself," to be directed to and executed by the sheriff of the city of Canterbury, from and after the morrow of St. Michael then next ensuing. Then follows the non-intromittant clause respect-

Former liberties, &c. to be preserved.

Sheriff to take the oaths before the mayor.

To have the return of writs.

Ch. 1 Ed. 4.

ing all other sheriffs, &c.; also a direction to the sheriffs of the said county, &c. to account, &c. before the Barons of the Exchequer.

To account before the barons of the Exchequer.

The charter then proceeds to make the coroner of the city, coroner for the county of the city, with the same powers, &c. as are used and belong to any coroner of any county within the realm.

Coroner of the city to be coroner of the county.

This charter then discharges the mayor and commonalty, and their heirs, from being taxers or collectors of any tax, other than within the city of Canterbury, the suburbs and precincts thereof.

Mayor, &c. not to be taxers.

Next comes the reservation of privileges, &c.: "Provided always, that by force of our present grant, no injury shall in anywise be produced to the mayor and commonalty of the city aforesaid, as to other the liberties, franchises and immunities, customs, constitutions and quittances to them or to their (*d*) predecessors by us or our progenitors

Reservation of privileges, &c.

(*d*) A distinction seems to be taken here between the corporate privileges granted to the mayor and commonalty and their predecessors, and those enjoyed by the late bailiffs and citizens; therefore the latter clause may be construed as retaining, not only all privileges granted by charter to the bailiffs and citizens, but all which they had previously enjoyed, and if so, the right of voting for Kent would be one that they must have exercised many years. It is perhaps hardly safe to lay too much importance upon minute expressions in charters; but it is fair to observe, that this construction would do away with an apparent anomaly in the rights exercised by the corporate counties, as it would place this among the list of exceptive charters,

heretofore granted to them, or to the late bailiffs and *citizens* of the said city, or by them used."

Ch. 1 Ed. 4.

The mayor also is appointed escheator of the "city, suburbs and precincts, except as before excepted," to the exclusion of any other escheator, and with the same powers; likewise all the issues and profits of the office of escheator are thereby granted to the "mayor and commonalty of the city aforesaid, and the citizens thereof, their heirs," &c.

Mayor to be escheator.

And in case the bailiff should die or be removed within the year, the mayor and aldermen are to elect and create another fit person to be bailiff of the said city, and sheriff of the county of the said city (*e*).

Bailiff dying, a new bailiff to be elected.

Hen. VII. in the 13th year of his reign, and Hen. VIII. in the 3d, likewise granted charters of confirmation. The latter king also granted

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and bring the retention of the elective franchise for the county of Kent, by the freeholders of Canterbury, within the principle which governed the decision of the House of Commons upon the rights of the freeholders of the Ainsty of York, as this charter, although not in the same terms, would also contain a clause reserving general privileges to the inhabitants.

(*e*) This charter is dated on Aug. 2d, in the year above mentioned, and endorsed by the same king and of the date aforesaid, by authority of Parliament, and for 10 *l.* paid in the Hanaper. Hasted, v. 4, p. 394. Ed. IV. however began to reign 4 Mar. 1461; the charter is dated the 2d of August, and the first Parliament summoned by Ed. IV. met Nov. 4. in that year.

Letters Patent, 13 Hen. 8.

Hasted, v. 4, p. 394, e. a.

letters patent, usually styled *novæ ordinationes* (13 Hen. VIII.), for the better government of the city, mayor and citizens; but as the provisions of this instrument are purely of a corporate nature, and principally relating to the elections of their corporate officers, it is not necessary to notice them further.

34 & 35 Hen. VIII. c. 18, an Act passed, intituled, "An Act for Canterbury, concerning the privileges of the same;" which Act contains "a confirmation of all liberties granted by the king, or any of his progenitors, to the mayor and aldermen of Canterbury, which the king may resume upon cause."

Hasted, p. 395.

Queen Eliz. likewise, in the 1st year of her reign, confirmed all former charters, privileges and liberties to this city.

Ch. 6 Jac. I.

In the 6 Jac. I. the mayor and citizens petitioned that king for a new charter, with a confirmation and extension of their freedoms and liberties, which was granted, wherein he fully confirmed all former liberties and privileges, and "made, new erected and created" them one body corporate and politic, by the name of the mayor and commonalty of the city of Canterbury, and granted some corporate privileges; directed the mode in which the corporate officers and the members of that body should be elected, concluding with a reservation and confirmation of all liberties and jurisdictions within the city, liberties and precincts of the same: "Provided always,

hat this his present grant or confirmation should not in anywise extend to the palace of the archbishop of Canterbury, or to the hamlet of Stablegate, or to the scite and precinct of the cathedral and metropolitan church of Christ in Canterbury, nor to any other place whatsoever, being without the liberties of the city of Canterbury, or give place to, or any way be extended to the prejudice or diminution of any right or title of any liberties, franchises, exemptions or jurisdictions of the archbishop or his successors, or the archbishopric, or of his honour, chancellor Edward lord Wotton, his lieutenant of the county of Kent, the city of Canterbury and the county of the same, or of the lieutenant of him, his heirs and successors, within the county of Kent, the city of Canterbury and the county of the same, for the time being, or of the dean and chapter of the cathedral and metropolitan church of Christ in Canterbury, or of the late dissolved monastery of St. Augustine near Canterbury, or of his Cinque Ports, anything contained in these presents to the contrary notwithstanding." Ch. 6 Jac. I.

On the resumption of charters by Car. II. this city received a new charter; likewise another on the accession of James II.; both of which being nullified by the proclamation in 1688, the city was restored to the charter of Jac. and to all its former liberties, under which it has continued to be governed to the present day.

The municipal government consists of "a Municipal government.

Municipal government.

mayor, recorder, twelve aldermen, a sheriff, twenty-four common councilmen, and other officers (*f*)."

The sheriff is the returning officer.

Journals, v. 22, p. 456.

The right of election is in the mayor, sheriff, aldermen, common councilmen, and freemen of the said city, being entitled thereto either by birth, marriage, or by serving seven years apprenticeship to freemen of the said city, or by purchase or gift.

Members first returned.

Canterbury has returned members to parliament from the (*g*) 23d Ed. I. to the present time.

Right of voting.

The proprietors of freeholds situate within the county of the city of Canterbury vote at the election of knights for the county of Kent.

Journals, v. 22, p. 333.

In 1734 a petition was presented against the return of Sir William Hardress and Thomas May, esq. for the city and county of Canterbury, which was referred to the committee of privileges, who reported that—

Ib. 456.

11 Apr. 1735.

"The right of election not having been settled by this House, it was agreed by the counsel on both sides to be the usage and custom,

"That the right of electing citizens, to serve in parliament for the city and county of Canterbury, is in the mayor, sheriff, aldermen, common councilmen and freemen of the said city, being entitled

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(*f*) The lord lieutenant of the county of Kent is also lieutenant of the city and county of the city of Canterbury.

(*g*) Carew says from 26 Ed. I. and cites Prynne, pt. 1, p. 126, c. 2; Willis, that it sent members *ab origine*, p. 27. *Et vide* Hasted, v. 4, p. 404, where he gives a list of members.

thereto either by birth, marriage, or by serving seven years apprenticeship to freemen of the said city, or by purchase or gift."

Resolution, 1735.

This is the only resolution I have been able to find on the right of voting for Canterbury; it is therefore probable that the freeholders have never voted for the city members, because the city is styled a city and county both in the petition and report, consequently the attention of all parties must have been drawn to that fact at the time the right of election was agreed to.

COUNTY OF THE BOROUGH OF CARMARTHEN.

CARMARTHEN, according to the recital in the preamble to the charter granted to it in 1764, is a borough by prescription, but did not enjoy any parliamentary privileges previous to the 27 Hen. VIII.

s. 29. By the following section of 27 Hen. VIII. c. 26, Carmarthen, in common with other places in Wales, was empowered to return a member to parliament: "And that for this present parliament, and all other parliaments to be holden and kept for this realm, one knight shall be chosen and elected to the same parliaments, for every of the shires of Brecknock, Radnor, Montgomery and Denbigh (*a*), and every other shire within the said country or dominion of Wales; and for every borough, being a shire town within the said country or dominion of Wales, except the shire town of the aforesaid county of Merioneth, one burgess; and the election to be in like manner, form and order as knights and burgesses of the parliament be elected and chosen in other shires

(*a*) These four were made counties by former sections of this Act, having previously formed part of the Marches of Wales.

of this realm; and that the knights and burgesses, and every of them, shall have like dignity, pre-eminence and privilege, and shall be allowed such fees, as other knights of the parliament have and be allowed; and the knights fees to be levied and gathered of the commons of the shire that they be elected in; and the burgesses fees to be levied and gathered, as well of the boroughs and shire towns as they be burgesses of, as of all other ancient boroughs within the same shires."

Hen. VIII, by charter dated 17 May, in the 38th year of his reign, created and declared the borough of Carmarthen "to be a free borough; and did create, ordain and constitute, nominate, appoint and declare, certain persons therein named, mayor and burgesses of the said borough. And did further will and grant, that the said mayor and burgesses should be a body corporate and one community, in deed and in name, by the name of the mayor, burgesses and commonalty of the borough of Carmarthen, and should have perpetual succession. And, by the same letters patent, did grant to the said mayor, burgesses and commonalty, divers lands and hereditaments, and all fines and amerciaments arising within the said borough, and the goods and chattels of felons and fugitives, and all waifs and estrays within the said borough, and divers other gifts, grants, privileges, liberties, franchises, jurisdictions, exemptions and immunities; and empowered them yearly or oftener, as occasion should require, to choose two of the Ch. 38 Hen. 8.

Ch. 38 Hen. 8.

burgesses aforesaid to be bailiffs of the said borough."

Made a county of itself by ch. 2 Jac. 1.

This borough was subsequently made a county of itself, by a charter bearing date 14th June, in the 2d year of the reign of Jac. I, by which that king "did, for himself, his heirs and successors, grant, ordain and appoint, and declare, that the said borough of Carmarthen, and all the suburbs, liberties and precincts thereof, and all and singular the towns, hamlets, lands, tenements, waters, rivers, and other hereditaments whatsoever, within the said borough, and the liberties and precincts thereof, should from thenceforth be a county of itself, and should be called the County of the borough of Carmarthen for ever. And that the mayor, burgesses and commonalty of the borough aforesaid, and their successors, should have, instead of the bailiffs of the said borough, two sheriffs in the same borough and precincts and county of the borough of Carmarthen aforesaid. And did also grant and confirm to the said mayor, burgesses and commonalty of the borough of Carmarthen aforesaid, and their successors, all manner of liberties, franchises, customs, privileges, immunities, exemptions and jurisdictions whatsoever; and also all and singular the manors, lands, tenements and hereditaments whatsoever, which the said mayor, burgesses and commonalty of the borough of Carmarthen aforesaid, or their predecessors, ever had or ought to have, use or enjoy, as by the said several charters or letters patent,

relation being thereunto respectively had, may more fully appear." Ch. 2 Jac. I.

Next comes the charter of the 4th G. III, which, reciting the "petition (*b*) of divers merchants, tradesmen, freeholders and inhabitants of our said borough of Carmarthen, that divers disputes having of late times arisen within our said borough and county of the borough of Carmarthen aforesaid, and that informations, in the nature of writs of *quo warranto*, having been prosecuted in our court of King's Bench, and judgments of ouster obtained against most of the acting magistrates and officers of the said corporation, the same corporation is now dissolved, or at least incapable of exercising and enjoying their said liberties and franchises: We, willing that the petitioners may be relieved in their complaints as far as in us lieth, and that there may be one certain and undoubted method of preserving our peace within our said borough and county of the borough of Carmarthen aforesaid, and that our people may enjoy their rights there, and exercise acts of justice without any further delay," constitutes, confirms and declares, "that our said borough of Carmarthen shall and may be and remain for ever hereafter a free borough of itself, terminated and limited by all its ancient and former metes and bounds; and that the burgesses Ch. 4 G. 3. Carmarthen to be a free borough, &c.

(*b*) These extracts are taken from a copy of this charter, printed at Carmarthen in 1812.

Ch. 4 G. 3.

of the same borough, by whatsoever name or names of incorporation or incorporations they have been heretofore incorporated or called, shall and may be for ever hereafter one body corporate and politic in deed and in name, by the name of the *mayor, burgesses and commonalty of the borough of Carmarthen,*" with power to hold and dispose of lands, to plead and be impleaded, to have a common seal, and to choose one mayor and twenty common councilmen out of the burgesses of the said borough. The charter then proceeds to nominate the first mayor and forty burgesses by name, and to provide for the election of the common council; and next regulates who should hereafter be qualified to be made burgesses of the said borough, as follows:

By the name of the mayor, &c.

Power to hold lands, and plead and be impleaded.

Common seal.

One mayor.

Twenty common councilmen.

First mayor nominated.

Forty burgesses nominated.

Who to be burgesses.

"And whereas the admission of unfit and improper persons to be burgesses of the said borough may be attended with great inconvenience to the welfare of the said borough; for the better regulation and ascertaining of the qualifications of persons hereafter to be admitted burgesses of the said borough, our will is, and we do hereby, for ourselves, our heirs and successors, ordain, that no person or persons shall, at any time hereafter, be entitled to be admitted a burgess or burgesses of the said borough, save and except all and every such person or persons who, for the space of three years or more before his or their application to be admitted burgess or burgesses of the said borough, hath or have been seised and possessed,

Ch. 4 G. 3.

by themselves or their tenants, of an estate of freehold, for the use of his or their life or lives, or some greater estate or estates, of and in messuages, lands or tithes of lands, situate and being within the said county of the said borough, of the yearly value of 4 *l.*; and save and except all and every such person and persons, who, at the time of such application to be admitted a burgess or burgesses of the said borough, shall be seized and possessed, by themselves or their tenants, of messuages, lands or tithes of lands, within the county of the same borough, of such estate of such yearly value as aforesaid, which have come to him or them by descent or marriage; and also save and except all and every such person and persons who shall have been bound by indenture, and served as an apprentice or apprentices, for the space of seven years or upwards, to and with any burgess of the said borough, who, during the said term, hath been usually resident within the same borough: which said person and persons, respectively so qualified as aforesaid, whether in right of freehold or servitude, shall be entitled to be admitted a burgess or burgesses of the said borough, so as such person or persons do make application for that purpose, to the mayor and commonalty of the said borough, on Monday next after Michaelmas in each year, and at no other time; and so as such person and persons do and shall, then and there, before the said mayor and commonalty, make due and legal proof of such his or their

Freeholders of 4 *l.* per annum within the county of the borough.

Service of seven years as an apprentice with a burgess within the borough.

Ch. 4 G. 3.

Who to be burgesses.

qualification or qualifications as aforesaid. And our will is, and we do hereby ordain, that upon such proof being so made, such person or persons shall thereupon be admitted and sworn a burgess or burgesses of the said borough, at the next or any subsequent fortnight court, to be held in and for the said borough, after such day on which he shall so make his claim as aforesaid. And we do further will, and do hereby, for ourselves, our heirs and successors, grant to the mayor, burgesses and commonalty of the said borough, and their successors, that it shall and may be lawful to and for the mayor and common council of the said borough for the time being, or the major part of them in common council assembled, on the first Monday next after the said feast of St. Michael in each year, and at no other time, at their discretion to receive application or applications, and to make order or orders, for the admitting of such of the inhabitants of the said borough, paying scot and lot, who, in consideration of their good behaviour, shall be thought deserving to be a burgess or burgesses of the said borough, so as nevertheless such person or persons so applying shall, for the space of three years then last past, have rented, held and occupied, and do then rent, hold and occupy, messuages, lands, or tithes of lands, within the said borough and county of the borough aforesaid, for which, during all that time, they have *bonâ fide* paid the yearly rent of 10 *l.*; and that upon proof thereof being made to the

Renters and occupiers of 10*l.* per ann. within the county of the borough.

*

satisfaction of the said mayor and common council, or the major part of them, such person or persons shall and may, by such order as aforesaid, at the discretion of the said mayor and common council, or the major part of them, thereupon to be made, be admitted and sworn a burgess or burgesses of the said borough, at the second fortnight court to be holden in and for the said borough, after such day on which he or they shall have so made his or their application or applications as aforesaid, or at any subsequent court".

Ch. 4 Geo. 3.

Who to be burgesses.

This charter also provides, that when, at the election of any corporate officer, the votes shall be equal, then that the mayor shall have the casting vote. The next clause in this charter continues Carmarthen a county of itself, in the following terms:—

At corporate elections the mayor to have the casting vote.

"And also, of our more bountiful grace, certain knowledge, and mere motion, we have willed, ordained and appointed, granted, confirmed and declared, and by these presents, for us, our heirs and successors, do will, ordain, appoint, grant, confirm and declare, that the said borough of Carmarthen, and all the suburbs, liberties and precincts thereof, and all and singular the towns, hamlets, lands, tenements, waters, rivers, and other hereditaments whatsoever, within the said borough, or the liberties and precincts thereof, shall be and remain a county of itself, and shall be called the County of the borough of Carmarthen for ever."

Continued a county of itself.

Ch. 4 Geo. 3.

Then follows permission to the mayor, burgesses and commonalty to elect on Monday next, after the feast of St. Michael in each year, one burgess to be mayor, and two burgesses "to be sheriffs, of the county of the borough of Carmarthen aforesaid, who for one whole year shall have under us, our heirs and successors, as far as to their respective offices doth appertain, the rule and government of the community of the borough and of the county of the borough aforesaid; and that the said mayor and sheriffs, and their successors, elected and to be elected in manner aforesaid, shall have and exercise the said offices successively in form aforesaid for ever."

Election of mayor and sheriffs.

The charter also provides for the election of a recorder, town clerk, sword bearer, &c. and directs "that the sheriffs of the county of the borough of Carmarthen aforesaid for the time being, shall have the same power and jurisdiction, in all things appertaining to the office of sheriffs within the said county of the borough of Carmarthen aforesaid, and the suburbs, franchises and liberties thereof, and in as ample manner and form as other our sheriffs have or ought to have within any other borough or city, or any of our counties," &c.; "and that the said sheriffs of the county of the borough of Carmarthen for the time being, shall hold their county court monthly on Mondays," in the same manner as other sheriffs.

Election of recorder, town clerk, &c.

Sheriffs of the county of the borough to have the same power as other sheriffs.

The charter then grants the return of all writs, &c. within the county of the borough, to the

Return of writs, &c.

sheriffs of the same, and requires all writs and processes, &c. to be directed to them, "and not to the sheriff of the county of Carmarthen, as in times long since past may have been used." The charter next provides, for the election of a deputy mayor and recorder in case of the sickness or absence of the principal; for the proper swearing in of the mayor and burgesses; for the notice requisite for the meetings of the common council, and of the mayor, burgesses and commonalty; for the order of precedence among the corporate officers; and for the election of a new mayor or sheriff in cases of death. Then follows a clause, directing the business both of the county of Carmarthen and of the county of the borough to be transacted in the guildhall of the borough, as follows: "And moreover, of our more ample and especial grace, certain knowledge and mere motion, we do by these presents, for us, our heirs and successors, give, grant and confirm to the said mayor, burgesses and commonalty of the borough aforesaid, and their successors, that they shall and may have within the said borough a guildhall, to be used, as well for all causes and business of the said mayor, burgesses and commonalty of the said borough, and the officers of the county of the borough of Carmarthen aforesaid, and their successors, as for the causes and business of the sheriff, and other officers and ministers of us, our heirs and successors, of our county of Carmarthen, and our justices assigned to keep the

Deputy mayor and recorder, &c.

Swearing the mayor, &c.

Meetings of the common council, &c.

Precedence among the corporate officers.

Business of the county of Carmarthen, and of the county of the borough, to be transacted in the guildhall of the borough.

Ch. 4 Geo. 3.

peace, and to hear and determine trespasses and other misdemeanors within our said county of Carmarthen, and also the justices of gaol delivery and assize in our said county of Carmarthen; and that it shall be lawful, as well for our said justices, sheriffs, and other officers and ministers, within our said county of Carmarthen, to transact and perform all their causes, matters and things whatsoever within the said guildhall of the borough of Carmarthen aforesaid, as for the said mayor, sheriffs and burgesses, and other the officers and ministers of the said borough and county of the borough aforesaid for the time being, to do, transact and perform all causes, matters and things whatsoever, concerning or relating to the borough and county of the borough aforesaid, within the said guildhall of the borough of Carmarthen aforesaid."

Fairs, &c.

Court of pie powder.

Fortnight court.

Power to levy fines, &c.

Six peers to be justices of the peace, &c.

The charter also contains a grant of fairs and markets; also of a court of pie powder; and one of record, to be held every fortnight before the mayor, recorder and town clerk, or any two of them, with power to levy fines (c), with proclamations, before the mayor and recorder. It also empowers the mayor, burgesses and commonalty, every year to elect out of themselves six peers, who, together with the mayor and the recorder, shall be justices

(c) This was a considerable privilege, as, previous to the act of 1824, fines could only be levied in Wales during the time of the Great Sessions, which occurred but twice a year.

Ch. 4 Geo. 3.

of the peace within the borough for the year ensuing; also to have a gaol, in which to confine all offenders arrested within the county of the borough; likewise to hold a court with view of frankpledge and of sessions of the peace, and that the town clerk shall be clerk of the peace, clerk of assize, and prothonotary within the borough and the liberties thereof; enables the mayor, &c. to make laws, &c. for the government of the borough, &c. and frees the mayor and burgesses of all tolls, &c. throughout the realm; makes the mayor for the time being clerk of the market, and grants the return of all writs within the county of the borough to the sheriffs thereof, to the exclusion of all other officers; appoints the mayor coroner and escheator; and directs that no burgess shall be tried out of the borough for offences committed within the same, and the liberties thereof; creates the mayor admiral on part of the waters of Towye, grants to him all fines arising within the borough for the benefit of the commonalty thereof; and requires him to return men fit to bear arms. The charter then proceeds to unite Old and New Carmarthen in the following terms: "And furthermore, of our more abundant grace, we have granted and confirmed, and by these presents, for us, our heirs and successors, do grant and confirm, to the said mayor, burgesses and commonalty of the borough aforesaid, and their successors, the town of Old Carmarthen, with

Gaol.

View of frankpledge.

To hold sessions.

Town clerk, clerk of assize, &c.

Power to make bye-laws.

Freedom from tolls.

Clerk of the market.

Return of writs.

No burgess tried out of the borough.

Mayor admiral.

Grant of fines.

Old and New Carmarthen united.

Ch. 4 Geo. 3.

all and singular its rights, liberties, franchises and laudable customs whatsoever, heretofore belonging to the late dissolved priory there; and that it shall be separated and divided from our hundred of Derllys, and from all other hundreds in our county of Carmarthen, for ever; and that it shall be joined, annexed and united to our said borough of New Carmarthen; and that the said borough heretofore called New Carmarthen, together with the said town of Old Carmarthen, shall from henceforth, throughout all our territories and dominions, be held and esteemed, as and for one borough only, and shall be named and called by the name of our borough of Carmarthen, the additions of New and Old being altogether extinct and abolished; and that all the said town of Old Carmarthen, with all its rights and appurtenances, shall be from henceforth under the order and government of the mayor and sheriffs of our said borough of Carmarthen, and county of the borough of Carmarthen, for the time being, and shall be held and reputed to be parcel of the said borough and county of the same borough, in all laws, franchises, privileges, customs, and all other essential things whatsoever, which we have, by these our letters patent, given or confirmed to the said mayor, burgesses and commonalty, and their successors; saving nevertheless, and always reserving to us, our heirs and successors, all our lands, tenements, rents and services within the said borough."

Ch. 4 Geo. 3.

By this charter, likewise, all justices of the peace for the county of Carmarthen are excluded from executing any office within the borough; also the mayor and burgesses are exempted from serving upon juries out of the borough; and all matters arising within the borough are directed to be tried by juries of the burgesses of the same, &c. Then follows the confirmation of privileges: "And we further will, and by these presents, for us, our heirs and successors, do ratify, confirm and restore, as far as in us lies, to the aforesaid mayor, burgesses and commonalty of the borough of Carmarthen aforesaid, and their successors, our said town of Carmarthen, and all and singular, so many, such like, and the same manors, lands, towns, hamlets, commons, pastures, fairs, markets, courts of pie powder, view of frankpledge and other courts, returns of writs, fisheries, fishings, waters, conservancy of waters, rivers, creeks and banks, wharfs, quays, tolls, goods and chattels of felons, felons of themselves, outlaws, goods waived, deodands, estrays, fines, amerciaments, profits, commodities, advantages, emoluments, hereditaments, authorities, liberties, privileges, rights, jurisdictions, immunities, freedoms and exemptions whatsoever, which the burgesses of the borough now or heretofore have or had, used or enjoyed, or as they or any of them, or their predecessors, burgesses of the said borough, by whatsoever name or names, or by whatsoever title of incorporation they were known or incorporated, and whether they were

Justices of the county of Carmarthen excluded from the borough.

Burgesses not to serve on juries out of the borough, &c.

Reservation and confirmation of privileges.

Ch. 4 Geo. 3.

incorporated or not, to them and their successors, by reason or virtue of any charters or letters patent, by any of our progenitors or ancestors, late kings or queens of England, heretofore made, granted or confirmed, or by whatsoever other lawful manner, right, title, custom, prescription or use heretofore lawfully used, had, or accustomed (except all and singular things in any thing contrary to these presents, or in any charter, grant or confirmation of any of our progenitors or ancestors heretofore excepted,) to have, hold and enjoy, to the same mayor, burgesses and commonalty of the borough aforesaid, and their successors, for ever," &c. &c. "In witness," &c. &c.

Municipal government.

The municipal government of the town is in the mayor, two sheriffs, sixteen aldermen, a town clerk, and other officers.

Justices of the peace.

The mayor, recorder, and six peers elected annually, are justices of the peace.

Returning officers.

The sheriffs are the returning officers.

Resolution of H. C. Journals, 19 March 1727, v. 21, p. 90.

The right of election for the borough of Carmarthen is, by a resolution of the House of Commons, dated 19th March 1727, declared to be in the burgesses of the said borough.

Freeholds situate within the county of the borough of Carmarthen do not confer votes for the county of Carmarthen.

Although the writ for electing a member for Carmarthen is directed to the sheriffs, and not to the mayor, no special county court is appointed for the election, as in the case of other corporate

counties, but a day is fixed for the election within the time prescribed for borough elections.

The sheriffs and magistrates of the county of the borough have exclusive jurisdiction within the same, and the lord lieutenant is the only officer of the county of Carmarthen who executes any office therein; but notwithstanding the lord lieutenant acts within this district, the custos rotulorum of the county does not. Neither is the lord lieutenant specially appointed for the county of the borough of Carmarthen (*d*). Lord lieutenant.

In 1727 a petition was presented against the return for Carmarthen. Petition 1727.

"And the evidence on both sides being given as to the right of election, and the charters and copies of several ancient records and returns being read, and the counsel on both sides further heard, and the counsel and witnesses being withdrawn; Journals, v. 21 p. 90.

"A motion being made, That the right of election of burgesses, to serve in parliament for the borough of Carmarthen, is in the burgesses of the said borough,

"An amendment was proposed to be made to the question, by adding, at the end thereof, these

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(*d*) In general the corporate county is specially named in the commission of the lord lieutenant of the parent county; but Carmarthen, Coventry and Lichfield are exceptions to this rule. Also, the commission of lieutenancy for Haverfordwest is distinct from that for Pembrokeshire; and for London it is granted to the lord mayor and aldermen, &c.

words: 'and in the inhabitants thereof paying scot and lot.'"

This amendment was negatived by a majority of 73 to 63; and the House—

19 March 1727. "Resolved, That the right of election of burgesses, to serve in parliament for the borough of Carmarthen, is in the burgesses of the said borough."

Journals, v. 32, p. 762. This resolution was read as the last determination on the right of election for this place in 1770, and not controverted.

COUNTY OF THE CITY OF CHESTER.

CHESTER, in two points, differs from the other corporate counties. First, Cheshire, of which the county of the city originally formed a part, is a county palatine; and, in the second place, its parliamentary rights were conferred by act of parliament. 34th and 35th Hen. 8, c. 13.

Lord Coke represents Cheshire "as the most ancient (*a*) and most honourable county palatine remaining in England," and as being such by prescription. 4 Inst. p. 211.

William the Conqueror created Hugh Lupus earl of Chester, and gave him the county in the following terms: "Totumque hunc comitatum, tenendum sibi et heredibus ita libere ad gladium, sicut ipse rex tenebat Angliam ad coronam dedit." Which grant, the same author observes, conferred *jura regalia* on the earl within the county, and consequently made it a county palatine, without being so created in express terms. Ib.

Having said thus much respecting the county palatine, I shall shortly notice those charters

(*a*) Ed. III, in making Lancashire a county palatine, granted that it should be such, "adeo libere et integre sicut comes Castriæ." 4 Inst. p. 212.

which were granted to Chester previous to that of the 21st Hen. VII, by which it was made a county of itself.

Ch. Earls of Chester. Vide Ormerod Hist. Cheshire, v. 1, 172. Ch. John.

Previous to the grant of any royal charters, this place received charters from the earls of Chester, which, together with the grant of certain privileges in Ireland by Hen. II, were confirmed by King John.

Ch. 22 and 23 Hen. 3.

Hen. III, being both earl of Chester and king of England, in the latter capacity granted three charters to the city, under the great seal, confirmatory of former charters.

Ch. 28 Ed. 1. Ormerod, 173.

Edw. I. confirmed the charters of Hen. III, together with that of Ranulp earl of Chester and Lincoln, and enabled the citizens to elect coroners, hold pleas of the crown, and to have sock, sack, toll, theme, infangthef and outfangthef, and to be free of toll and passage, &c. throughout the realm.

Ch. 1 and 25 Ed. 3. Ch. Black Prince.

Ed. III, by charters granted in the 1st and 25th years of his reign, confirmed all preceding charters, including those of the earls of Chester, as did also Edward the Black Prince.

Ch. R. 2.

Seven different charters were granted to Chester by R. II, in the 1st, 3d, 11th, 21st and 22d years of his reign, confirming former charters, continuing the exemptions from tolls, &c. and empowering the citizens to elect coroners, to hold pleas of the crown, and ascertaining and setting out the boundaries of the city.

Hen. V, whilst earl of Chester, confirmed the citizens in the possession of all their former privileges. Ch. Hen. 5.

Hen. VI. likewise confirmed all former charters, and, in consequence of the accumulation of sand about the port of Chester, reduced the fee-farm rent reserved by Ed. I; as did also Ed. IV. and Hen. VII. Ch. Hen. 6. Ch. Ed. 4.

We now come to the charter of the 21st Hen. VII, which created Chester a county of itself, and, in a great measure, remodelled the corporate body. Ch. 21 Hen. 7.

"Henricus Dei gra. rex Anglie et Fraunc̃ et dominus Hibernie archiepiscopis episcopis abbibus prioribus ducibus comitibus baronibus justiciar̃ vicecomitibus et omnibus ballivis et fidelibus suis salutem, Sciatis qd̃ nos ob magnam affectionem quam erga civitatem ñram Cestr̃ ac cives et comũitatem ejusdem civitatis gerimus et habemus Ac in consideracione boni gestus et grandium sumptuum et expens. civium ejusdem civitatis necnon gratuitoꝫ servicioꝫ nobis per ip̃os contra adversarios et rebell̃ nr̃os multipliciter impensoꝫ volentes melioracionem ejusdem civitatis necnon eor̃dem civium ac ip̃oꝫ heredum et successoꝫ commodo et quieti specialiter providere de gra. nr̃a speciali ac ex certa sciencia et mero motu nr̃is dedimus et concessimus damus et concedimus ac per p̃ntes confirmamus pro nobis et heredibus nostris prefatis civibus et cõitati ac eoꝫ heredibus et successoribus imperpetuum qd̃ dicta civitas ac

Ch. 21 Hen. 7. tota terra infra fossatum ejusdem civitatis cum suburbijs et hamelettis suis in precinct. et circuitu eoꝝdem et tota terra in precinct. et circuitu ejusdem civitatis Cestr̃ ac predict. suburbioꝫ et hamelettoꝫ suoꝫ (castro (*b*) nr̃o Cestrie infra muros ejusdem civitatis scituat omĩno except.) sint a com. Cestr̃ ex nunc exempta seperat. et in omĩbus et per omnia penitus exempta et seperata tam per terram q'm per aquam Et qd̃ dicta civitas et suburb̃ et hamelett ejusdem ac tota terra precinct. et circuitu eoꝝdem except. pre-except. sint de cetero com. per se in se distinctus et seperatus a com. ñro Cestr̃ et coĩtatus civitatis Cestr̃ de cetero nominetur et nuncupetur imperpetuum (*c*)."

This charter then proceeded to empower the citizens to appoint twenty-four aldermen, (of whom one to be chosen recorder,) and forty common councilmen; also to elect a mayor, who was authorized to act as escheator and clerk of the market. And granted that the mayor and com-

(*b*) The castle still continues part of the county palatine, for which it is the gaol; also the courts, in which the great and quarter sessions are held, are situate within its precincts.

(*c*) The following mistranslation of this passage has been adopted in all the printed translations of this charter which I have seen, "be by themselves severed and distinguished from the rest of our shire, and that for ever in speech there be difference made between our shire of Chester and our commonalty of Chester." This is clearly not a correct translation of the words of the charter, and is contrary to the terms used in the subsequent charter of Car. II, and the act of 43d Eliz. c. 15.

monalty should be one commonalty of themselves, and be enabled to plead and be impleaded by the name of the mayor and citizens of the city of Chester. Ch. 21 Hen. 7.

It next enabled the mayor and citizens to choose two sheriffs (*d*) annually from among themselves, and directed that both the mayor and sheriffs should be sworn before their predecessors.

The mayor is then authorized to exercise his offices of escheator and clerk of the market, both in the presence and absence of the king, in as ample a manner as any other escheator, &c.

The sheriffs are appointed with the same powers as other sheriffs, and are directed to hold a county court from month to month, on Mondays; also a court in which to determine and hear all pleas, &c. on Tuesday, Thursday and Friday in every week.

The mayor is directed to choose from year to year two coroners, who are required to take

(*d*) Ormerod (p. 173) gives a list of sheriffs from 1257; but I have not met with any grant of sheriffs, nor any charter which treats Chester as a county of itself prior to that of the 21st Hen. VII. By the 3d Geo. I, c. 15, ("An Act for the better regulating the office of Sheriff, &c.") s. 24, it is enacted, "That the sheriffs of the city and county of the city of Chester, and their successors, shall and may account as formerly before the mayor of the same city, and his successors, (for the time being,) for and touching all such matters and things as have been heretofore granted from the crown to the same city in and by their several and respective charters."

Ch. 21 Hen. 7. the oath of office before the mayor, and to discharge the same duties as the coroners for the county palatine of Chester, or those of any other county.

The mayor and citizens also are exempted from pleading or being impleaded without the city, or before the justices of the county palatine.

The mayor, aldermen and recorder are appointed justices of the peace within the city; and the mayor and sheriffs are authorized to arrest by their serjeants, and to have a proper gaol within the city in the Northgate tower.

There are other minute provisions respecting the corporate offices, which it is not necessary to notice.

The reservation of former privileges is conveyed in the following terms:

"Quare volumus concedimus et firmiter precipimus pro nobis et heredibus ñris quantum in nobis est qd̄ prefat. cives et eoz successoř imperpetuum omnibus et singulis concessionibus predictis modo et forma superius expressat. gaudeant et utant. Nolumus tamen nec ñre intencionis existit qd̄ colore seu virtute alicujus concessiónis seu ratificacionis per nos aut progenitoz ñroz comit. Cestř ut predictum est fact. ijdem cives vel eoz successores de aliquibus eoz libertat. seu antiquis consuetudinibus civitatis illius aliqualiter restring: Sed qd̄ iīpi cives civitatis nře Cestř predicte et eoz heredes et successores habeant omnes libertates et liberas consuetudines suas illesas et integras sicut

eas unq'm ante hec tempora liberius habuerunt Ch. 21. Hen. 7.
Et ulterius de habundanti gra. ñra concessimus et hac presenti carta ñra confirmamus prefat. nunc majori civibus aldermannis ac viĉ civitatis predicte necnon civibus et cõitati ejusdem civitatis heredib3 et successoribus suis qđ iꝑi heredes et successores sui predicti ex nunc habeant et teneant imperpetuum p'đ civitatem ñram Cestr̃ hamelett. et suburb̃ ejusdem cum omnibus terr̃ tenementis proficuis comoditatib̃ escaet. foris fact. deodand. amerciament. finibus et cum quadam custuma voĉ murage et cum omnibus aliis juribus et rebus predict. universis qualitercumq3 pertinen. sive spectan. in eadem civitate hamelett. suburb̃ et terr̃ ejusdem emergent et nobis et heredibus ñris com. Cestr̃ et successoribus ñris debit seu debent eodem modo et forma sicut nos de jure habere gaudere et possidere debemus aut debimus ad feod. ffirmam đe nobis heredibus et successoribus ñris comit. Cestr̃ reddend. inde nobis heredibus et successoribus ñris ꝑdĉis comit. Cestr̃ anuatim ad sc'cum ñrum Cestr̃ pro premiss. habend. vigint. libr̃ argenti et non ultra ad festa Pasche et Sancti Michaelis Archaungeli per equales porciones absq3 eo qđ ijdem major aldermanni viĉ necnon cives et cõita. civitate ñre predicte heŕe nec successores sui com. Cestr̃ sint de cetero de aliqua antiqua ffirma civitatis illius et de omnibus inde arreragiis onerati sed ab eadem antiqua firma cum suis arreragiis sique fuerint et qualibet parcella eor̃dem ex nunc penitus exonerati et dimissi sint imperpetuum et

Ch. 21 Hen. 7. quieti absq, compoto seu aliquo alio inde nobis reddend. solvend. aut faciend."

This was the governing charter of Chester, when it was first empowered to send representatives to parliament by the Act of the 34 & 35 Hen. VIII, which is intituled, "An Act for making of knights and burgesses within the county and city of Chester (*e*).

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4 Inst. p. 216.

(*e*) Durham also was a county palatine by prescription, and, like Cheshire, did not return members to parliament, either for the county or city, until enabled to do so by the 25 Car. II. c. 9. A bill for this purpose was first introduced in 1562, but without success. In consequence of a report from the committee of petitions, in 1614, a bill was brought in, to enable the county and city of Durham, and the town of Barnard's Castle, to return knights and burgesses to parliament, which underwent much discussion, but was ultimately lost in the committee by the termination of the session. A similar bill was introduced in 1620, and again in 1621, which passed both houses, but never received the royal assent; and various other attempts of the same nature were made between that period and 1672, when the Act before alluded to passed. Willis, however, intimates that persons sat as members for this county during the Commonwealth, in 1654 and 1656.

Journals, 14th May, 21st May.

Pembrokeshire was also an ancient county palatine, but was deprived of the rights incident thereto by the 27th Hen. VIII, c. 26; by which statute it was (in common with the other Welch counties) first empowered to return one knight for the county and one burgess for the borough.

Lancashire was made a county palatine by letters patent of the 50th Ed. III.; having previously returned members to parliament for the county since 22 Ed. I, and for the town from 26 Ed. I. But notwithstanding this had been the case, the letters patent of Ed. III. provided for the

"To the king, our sovereign lord, in most humble wise shewen unto your excellent majesty, the inhabitants of your grace's county palatine of Chester, that where the said county palatine of Chester is and hath been always hitherto exempt, excluded and separated out and from your high court of parliament, to have any knights and burgesses within the said court; by reason whereof the said inhabitants have hitherto sustained manifold disherisons, losses and damages, as well in their lands, goods and bodies, as in the good, civil and politick governance and maintenance of the commonwealth of their said country: and forasmuch as the said inhabitants have always hitherto been bound by the acts and statutes made and ordained by your said highness and your most noble progenitors, by authority of the said court, as far forth as other counties, cities and boroughs have been, that have had their knights and burgesses within your said court of parliament, and yet have had neither knight nor burgess there for the said county palatine, the said inhabitants, for lack thereof, have been oftentimes touched and grieved with acts and statutes made within the said court, as well derogatory

34 & 35 Hen. 8. c. 13.

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return of the proper quota of members in the following terms:

"Et est intentiones nostræ, quod idem dux ad mandata nostra et heredum nostrorum ad parliament. et consilia nostra duos milites pro communitate comitatus prædict. et duos burgenses pro quolibet burgo ejusdem comitatus," &c.

Carew, p. 312.

34 & 35 Hen. 8. c. 13.

unto the most ancient jurisdictions, liberties and privileges of your said county palatine, as prejudicial unto the commonwealth, quietness, rest and peace of your grace's most bounden subjects inhabiting within the same: for remedy whereof, it may please your said highness, that it may be enacted, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, that from the end of this present session the said county palatine of Chester shall have *two knights for the said county* palatine, and likewise *two citizens to be burgesses for the* (*f*) *city of Chester*, to be elected and chosen by process to be awarded by the chancellor of England unto the chamberlain (*g*) of Chester, his lieutenant or deputy for the time being; and also like process to be made by the said chamberlain, his lieutenant or deputy, to the sheriff of the said county of Chester; and the same election to be made under like manner and form, to all intents, constructions

(*f*) It is somewhat singular that this act of parliament should not treat Chester as a county and city, as is the case in that of Eliz. hereafter noticed, and that of 3 G. I. before alluded to. *Vide* note (*d*) p. 125.

(*g*) "Within this county palatine and the county of the city of Chester, there is and anciently hath been a principal officer, called the chamberlain of Chester, who hath, and time out of mind hath had, the jurisdiction of a chancellor." 4 Inst. p. 211.

The county of the city is still within the jurisdiction of the chamberlain's court.

34 & 35 Hen. 8. c. 13.

and purposes, as is used within the county palatine of Lancaster (*h*), or any other county and city within this realm of England: which said knights and burgesses, and every of them, so elected and chosen, shall be returned by the said sheriff (*i*) into the chancery of England, in due form, and upon like pains, as it is ordained that the sheriff or sheriffs of any other county within this realm should make their return in like case; and which said knights and burgesses, and every of them, so elected and returned, shall be knights and burgesses of the court of parliament, and have like voice and authority, to all intents and purposes, as any other the knights and burgesses of the said court of parliament have, use and enjoy; and in like wise shall and may take all and every such like liberties, advantages, dignities, privileges, wages, fees and commodities, concerning this said court of parliament, to all intents, constructions and purposes, as any other the knights and burgesses of the said court shall, may or ought to have, take or enjoy."

(*h*) The right of voting for Lancaster is in the freemen and inhabitants; but for Chester, in the freemen. *Vide post*. Resolution 1747, p. 135.

(*i*) Notwithstanding this clause, the writs for the election of members for the city of Chester are directed to, and returned by, the sheriffs of the county of the city, without the intervention of the sheriff of the county palatine. *Vide post*. p. 134.

Ch. Eliz. Jac. I.

Queen Elizabeth, in the 16th year of her reign, granted a charter of confirmation. So also did Jac. I. in 1604.

Letters Patent, Oliver Cromwel.

In 1658, Oliver Cromwell, by letters patent, granted the hospital of St. John the Baptist, without the northgate, to the mayor, aldermen and citizens of Chester; which was afterwards vested in the corporation by a charter of the 4th Feb. 37 Car. II.

Ormerod, v. 1. p. 277.

In 1659 the charters of Chester were taken away, and the corporation dissolved, by a vote of parliament, which was declared null and void 17th Feb. 1659-60.

Ib. p. 174.

The charter of 21 Hen. VII. was confirmed 16 Car. II.

Ch. Car. 2.

It is unnecessary to notice the proceedings by *quo warranto*, instituted by Car. II, or his subsequent charters, which, together with the first charter granted by Jac. I, were nullified, and all former privileges restored, by that granted 4 Jac. II, in which Chester is described as the County of the city of Chester, in the same terms as those used in the charter of 21 Hen. VII.

Ch. Jac. 2.

Ch. G. 3.

Chester likewise received a charter in the 44 G. III, providing for the appointment of a deputy mayor, &c., but which has no bearing on the present inquiry.

Power to levy fines.

By the statute of 2 & 3 Ed. VI, c. 28, power was given to levy fines of lands within the county palatine of Chester, before the high justice of Chester, &c. The 43 Eliz. c. 15, reciting the last-mentioned

St. 43 Eliz.

Act of Ed. VI, "and forasmuch as the said Act doth not extend to any lands, tenements or other hereditaments lying and being within the county of the city of Chester (the said city, with the suburbs and hamlets thereof, and all the land within the precinct and circuit of the said city, suburbs and hamlets, being long before, by our late sovereign lord of famous memory, king Henry VII, by his highness's letters patent, bearing date at Chester, the 6th day of April, in the 21st year of his reign, divided, exempted, and in all things separated from the said county of Chester, and from thenceforth made and appointed to be a county by itself, and in itself distinct and separate from the said county of Chester), so that the inhabitants within the said city, and all others, being owners of lands within the county of the said city, have no means to levy any fines of such their said lands in any of his highness's courts of record," enacts, that fines shall thenceforth be levied of any lands, &c. "lying or being within the said county of the city of Chester, before the mayor of the said city for the time being, in the portmote court, in such manner and form as fines may be levied, by any laws or statutes of this realm, before the queen's majesty's high justice of her county palatine of Chester, of lands within the same county palatine."

43 Eliz. c. 15.

Fines to be levied before the mayor.

The municipal government of Chester is vested in a mayor, recorder, two coroners, twenty-four

Municipal government.

Municipal government.

aldermen, forty common councilmen, a treasurer, two murengers, and two leave lookers.

Lord lieutenant.

The lord lieutenant of the county palatine is also appointed for the county of the city of Chester.

Chamberlain.

Also the county of the city is within the jurisdiction of the chamberlain of the county palatine.

Justices of the peace.

The mayor, aldermen and recorder are justices of the peace within the county of the city.

Returning officer.

The sheriffs (*k*) are the returning officers.

Right of voting. Resolution 1747.

The right of election for members of parliament is in the mayor, aldermen, common council, and citizens (freemen), being commorant within the city.

Freeholds situate within the county of the city do not confer votes for the county palatine.

I have not met with any instance in which the freeholders of the county of the city have claimed to vote, either for the city members or those of the county palatine.

Petition, 1690.

In 1690 a petition was presented against the

(*k*) In addition to the ordinary duties of their office, the sheriffs of Chester have the charge of superintending the execution of such persons as may be capitally convicted in the county palatine, who are delivered up to them by the sheriff of the county palatine, at the confines of the castle precincts, to be taken to the city gaol, where these criminals are always executed. This practice is said to have originated in the rescue of a county criminal, at the place of execution, by a city mob.

return of Sir Thomas Grosvenor and Richard Leving, esq.; when the committee reported, "that the right of election was in the freemen of Chester." The return, however, was at this time made by the sheriffs; for the petitioners stated, in their petition, that they had been duly elected for "*this city and county*," and complained that the *sheriffs* ought to have returned them, instead of the sitting members.

Petition, 1690.

Journals, 2 Dec. 1690.

On the hearing of a petition against the return of Mr. Warburton, in 1747, the charters of 21 Hen. VII. and 16 Eliz. were produced, also the books of the corporation, and the Act of 34 & 35 Hen. VIII.; but no notice was taken of the freeholders, the only question being, whether the freemen generally, or under the restrictions contained in the following resolution, possessed the right.

Petition, Feb. 8. 1747. Journals, v. 25. p. 498.

The House resolved, "That the right of electing citizens to serve in parliament for the city of Chester, is in the mayor, aldermen and common council of the said city, and in such of the freemen of the said city, not receiving alms, as shall have been commorant within the same or the liberties thereof, for the space of one whole year next before the election." The right of election for Chester is still governed by this resolution.

Ib. Feb. 9. p. 505.

COUNTY OF THE CITY OF COVENTRY.

Dugdale's Hist. of Warwickshire, p. 85.

COVENTRY was early a place of considerable riches and importance, and, according to Dugdale, derives its name from *coven*, owing to the foundation of some religious house or convent there; and the British word *tre*. The same author attributes its subsequent wealth and honour to the monastery founded by Leofrick earl of Chester and Mercia, in the time of Edward the Confessor. At this time Coventry was part of the possessions of that nobleman and the countess Godiva, so celebrated for her exertions in obtaining immunities from her husband for the people of Coventry, as well as for her contributions to the religious foundations of this place. Coventry, at one time, seems to have been considered part of the possessions of the earldom of Chester, and although separated therefrom by the Conqueror, it was subsequently re-united thereto by purchase of Ranulph earl of Chester from Hen. I. Ranulph had a castle at Coventry, and "caused the chappells of Allesly, Ansty, Shulton and Wykin (all hamlets then within the precincts of Coventry) to be built." It is probable that Stirhall was also at this time part of earl Ranulph's possessions at Coventry, as it is

Ib. 88.

mentioned that Hugh, his son, "gave the village of Stivichale, adjoining to Coventry, with a mill next to the park, and some other grounds thereabouts, to the" bishop of Chester and his successors. Hugh having, together with his tenants at Coventry, joined in the rebellion against Hen. II, in the 10th year of his reign, they were put to fine, and their liberties were seized by the king; but after his death they were restored and confirmed in the 28th year of the same king, for which the sum of twenty marks was paid.

Early history.

Dugdale, 88.

Earl Hugh was succeeded by earl Ranulph, who "confirmed to his burgesses here (for so in this charter he styles them) that they should well and quietly hold all their possessions in free burgage, as they did in his father's time, or any of his ancestors; granting likewise to them all such freedomes as the burgesses of Lincoln enjoyed; and prohibiting all his constables and officers from impleading them at the court of his castle; but that they should have a portmote (*i. e.* a town court) of their own, in which they might freely hold plea of all things to him the said earl or themselves belonging; and choose some one man among themselves, well skilled in the laws and customes, who in his stead should be judge over them, and, dealing impartially, may do him equal right. And if any one should happen to fall into the said earl's mercy, that he should be amere't by his bailiff and burgesses of the court. And whatsoever merchants they should bring thither for

Ib.

Charter of Ranulph earl of Chester.

Confirmation of privileges.

Portmote court.

Early history.

the advantage of the town, that they might reside peaceably there, without being injured or unjustly impleaded. And if any forrein merchant should deal unfittingly, he to make satisfaction for it in the portmote in the presence of the judge." This charter was confirmed by Hen. II, who made the following additions to it: "viz. that if any of them should happen to make a forfeit to the earl, he should be acquit thereof for xii. *d.* And if, by the testimony of his neighbours, he were not able to pay so much, they to qualify the sum to the measure of his ability: as also, that the said burgesses should not be liable to lend unto the said earl, or those that belong to him, any rent or annuall payment, but upon condition that their cattell might be in safety. And lastly, whosoever should come to inhabit there, that from the day of his beginning to build for two years following, to be free from all payments whatsoever." The same earl procured a charter from Hen. III, in the second year of his reign, enabling the people of Coventry to hold a fair there.

Ch. Hen. 2. Dugdale, 88.

Ch. 2 Hen. 3.

Death of Ranulph.

Ranulph died without issue, leaving four sisters or their children his heirs, in consequence of which his possessions were divided, and Coventry, amongst others, became the property (*a*) of Hugh de Albany, second son of William de Albany earl of

Succeeded by Hugh de Albany.

(*a*) Lands in Ansty and Wykin are enumerated as part of the possessions received by Hugh de Albany from his uncle.

Arundell, who had married Mabel, second sister to earl Ranulph, but who, together with his eldest son William, died during the life-time of Ranulph.

Early history.

Hugh de Albany died, leaving his four sisters his heirs, when Coventry, &c. became the property of Cecily the youngest, who married Roger de Montalt, who was one of the earl of Chester's barons, and seneschal of Chester; to whom Hen. III, in the 30th year of his reign, granted by charter the right of free warren in all his demesne lands there. In the 34th year of the same reign, Roger de Montalt "intending a voyage to the Holy Land, and wanting money for his support therein, was furnish't with a very large summe by the monks of Coventry. In consideration whereof, he, with the before specified Cecily his wife, of whose inheritance this fair lordship was, joyned together in the sale of it; as also of the advowson of St. Mich. church, and all the chappells thereto belonging, unto the said monks in fee-farme. In which sale were excepted to them and their heirs, their mannour-house of Cheylesmore, with the park inclosed, and the religious house of Friers-minors, situate near the said park; with free liberty also to the said Roger and his heirs, whensoever they should come in person to Coventre, for hunting and hauking within the precincts of the said mannour. And likewise excepting the homage and services of

Hugh de Albany dies.

Succeeded by Roger de Montalt.

Sale of lordship, &c. by Roger de Montalt to the monks.

Early history.

Gilbert de Segrave in Calondon (*b*), Will. de Olney in Asthull, Vitalis de Folkeshull in Folkeshull, Walter Deyvill in Whitley Stoke and Coventre, Rob. de Stoke in Stoke, Miles de Garbold in Whitley, and Hugh de Loges in Sow, and their heirs, with all reliefs, escheats, and other duties in respect of those lands. And also excepting the homage and services of Hugh Despencer in Lightbrough, Ralph Bracebrigge in Kynnesbury, Will. de Butelor in Eccleshall and Folkeshull, and their heirs; Rob. Tusbat in Keresley, and of Wido. fil. Roberti, James de Audeley in Folkeshull and Eccleshall, Walter de Langley in Wykin, Tho. le Irreys in Ansty, Tho. de Nevill and Walter de Coventre in Stoke, Gilb. de Preston, John le Pover, and Alexander Deyvill, in Tackley, and their heirs; with all reliefs, escheats, &c. to the same lands belonging: and all military services, reliefs, &c. wheresoever within the realm of England belonging to the said mannour of Coventre. And excepting to all his freeholders such liberty as they had heretofore used to enjoy, either in the woods or mannour of Coventre, so that they should not be disturbed by the said prior and convent, or their successors. Excepting likewise the hospital of Sponne for lepers," &c. For all which a yearly rent was reserved, payable to the said Roger and Cecily,

Dugdale, 88.

Bargain between Roger de Montalt and the monks.

(*b*) These places form part of the county of the city of Coventry.

and their heirs, at their mannour-house of Cheylesmore. Early history.

In the 3d of Ed. I, an extent was taken of this manor on the death of Robert de Montalt, son of the before-mentioned Roger de Montalt, when the manor-house of Cheylesmore, with the park and mill, were valued at 5 marks per annum, the rent of assize belonging thereto at 39*l.* 9*s.* 7*d.* and the perquisites of court at 6*s.* 8*d.*

Ch. 13 Ed. I.

Ed. I, in the 13th year of his reign, granted his letters patent to the burgesses and good men of Coventry, authorizing them to take toll of all vendible commodities brought there for the space of three years then next ensuing, towards the charge of paving the town. And the same king, in the 23d year of his reign, again granted a similar charter, but with this difference, that instead of being granted "*Burgensibus et probis hominibus,*" it was directed *Ballivis et probis hominibus de Coventre*; which shows, says Dugdale, "that the originall of their bailiffs was betwixt the 13th and 23d Ed. I, though the very time when they were constituted be not recorded."

Grant of tolls to the burgesses, &c.

Ch. 23 Ed. I.

Grant of tolls to the bailiffs, &c.

Dugdale, 89.

In the 1st of Ed. III, Robert de Montalt, brother and heir of Roger, the son to the last-mentioned Robert, with Emma his wife, "levyed a fine of all their interest here, by the name of the mannour of Cheylesmore, with the appurtenances; 96 *l.* 6 *s.* 8 *d.* yearly rent, and the services of the prior of Coventre; thereby entayling the

Entail of the manor of Cheylesmore by Robt. de Montalt, &c.

Early history.

same upon the heirs male of his body; and for lack of such issue, on Isabell, Q. of England, (mother to king Ed. III,) during her life; and after her decease, on John of Eltham, brother to the said king, and the heirs of his body; and for lack of such issue, on the said king Edward and his heirs for ever." John of Eltham being dead, and Ed. III. having advanced Edward the Black Prince to the dignity of duke of Cornwall, with the assent of queen Isabel settled the manor of Cheylesmore upon him after her death, "to hold to him, the said duke, and to the eldest sons of him and his heirs, kings of England, dukes of that place, successively, and not to be severed from the said dukedom; upon the death or not existency of such dukes, to revert unto the crown together therewith." After which (Dugdale observes) there were divers great privileges granted to this place, viz. "in 18th Ed. III, that the tenants to the said Q. should, during her life, be free from pavage, passage, paage, lestage, stallage, tallage, carriage, pesage, pikage and terage, throughout all the kings dominions; and that she should, within the precincts thereof, have return of writs, as also felons goods, fines for trespasses, and for licences of concord, amerciaments, redemptions, issues forfeited, year, day and waste, with divers others. And the next year following did the same king further grant to the before specified Q. during her life, and to the said

Settled by Ed. 3. on Edward the Black Prince.

Dugdale, p. 90.

Ch. 18 Ed. 3.

Freedom from toll, &c.

Return of writs, &c.

19 Ed. 3. a court leet granted.

prince in reservation, and his heirs, a court leet within this mannour, with power to hold pleas of all such things as usually were determined before the justices of assize for the county of Warwick: and likewise to have return of writs, goods of felons and fugitives, within the precincts thereof; with a gaol for the safe custody of felons or other transgressors."

Early history.

Power to hold pleas.

Return of writs, &c.

Subsequently, Ed. VI, in the 3d year of his reign, granted this manor and park (then being part of the possessions of the dutchy of Cornwall) to John earl of Warwick and his heirs; who, "on the 12th of August following, made a lease of the premises unto the mayor, bailiffs and commonalty of Coventry, for the term of 99 years, to the uses and intents following: viz. that they and their successors, for the relief of the poor of the said city, should yearly take to pasture in the said park, the number of eighty kyne or heifers, and twenty geldings, of such poor inhabitants of the said city and suburbs as should not have elsewhere nigh thereto sufficient pasture, paying yearly for every cow or heifer 1 *d.* and for every gelding 2 *d.*"

Grant of the manor of Cheylesmore by Ed. 6. to John earl of Warwick.

Lease thereof by him to the mayor, &c.

John earl of Warwick being attainted in the reign of queen Mary, the mayor, bailiffs and commonalty subsequently obtained a grant of this property from queen Elizabeth, to hold to them and their successors for ever, at a fee-farm rent of 9*l.* per annum; at the same time covenanting to perform the trusts before specified in behalf of

Attainder of John earl of Warwick.

Grant from Q. Elizabeth to the mayor, &c.

Early history.

the poor inhabitants, as appears by an indenture dated 4th April, 10th Eliz.

History of Coventry resumed.

Having proceeded to trace the history of the manor of Cheylesmore until it became permanently vested in the mayor, bailiffs and commonalty of Coventry, we will now return to that of Coventry, which we quitted at the charter of Ed. I, granting certain tolls for a limited time, to enable the inhabitants to pave the town.

Letters patent, 2d and 8th Ed. 3.

Granting tolls, &c.

Freedom from tolls, &c.

Ed. III. also, in the 2d and 8th years of his reign, granted letters patent, authorizing the levying of tolls for the improvement of the town; also granting the citizens freedom from toll, &c. throughout the realm.

Letters patent, 18 Ed. 3.

Dugdale states, that at this time Coventry had not the reputation of a city or a borough, and dates its existence as a corporation from the 18th of Ed. III.; who, "at the instance of Q. Isabel, (who had the estate at Cheylesmore for life), as also in consideration that the reversion thereof was vested in Edward, then prince of Wales, D. of Cornwall and E. of Chester," did, by his letters patent of the last-mentioned date, "make it a corporation, consisting of a mayor and bailiffs, which the inhabitants should have power to choose and make out of themselves yearly; who, taking their oath according to the accustomed manner in the like cases, might from thenceforth do all things appertaining to those offices. And that they, their heirs and successors for ever, should thenceforth also have power to hold pleas, as well

Coventry incorporated of a mayor, &c.

Power to hold pleas.

of trespasses, contracts and agreements, as of all other things happening within the town (c)." The same letters patent gave them a common seal, authorized the mayor, &c. to receive recognizances of debt, and the establishment of a prison for the punishment of offenders taken within the said town, of which the mayor and bailiffs for the time being were always to have the custody and charge.

Letters patent, 18 Ed. 3.

A common seal.

Power to take recognizances, &c.

Town prison.

In the 29th Ed. III. the walls of Coventry were commenced, which gave rise to several licences from the king to take tolls to defray the expence thereby incurred.

Ric. II, in the 1st year of his reign, confirmed all those liberties and privileges which had been severally granted by Hen. II. and III, and Ed. II. and III.; and also in the same year constituted John Percy, and five others, justices for the conservation of the peace within the town of Coventry, with powers to hear and determine matters

Ch. 1 R. 2. Dugdale, 92.

Confirmation of former charters, &c.

Justices of the peace.

(c) In the 28th Ed. III, Gilbert Chasteleyn, under-sheriff of the counties of Leicester and Warwick, being charged with 80 *l.* for the *firma de proficuo* of his counties, complained that the men of Coventry, and the hamlets thereof, used to plead in the county and hundred courts of the county of Warwick, and that the issues and profits of those pleas were included in the firme of those counties; but that now, by reason of their liberties, their bailiffs and ministers received the profits, &c. arising from thence, which they detained for their own use; and prayed, that he may be discharged *pro tanto*, and the townsmen of Coventry called upon to answer for the same. Mad. Firm. Burg. p. 107–8.

Ch. 1 R. 2. of felony and trespass; and seven years afterwards he confirmed the charter of licence of 37th

Ch. 8 R. 2. Ed. III, for building the walls, &c. and granted them further assistance for the purpose.

Ch. 11 R. 2. The next charter was that of the 11th R. II, by which the mayors were thenceforth excused from appearing before the barons of the Exchequer to take the oaths, and the commonalty exempted from the collection of tenths, fifteenths, and all other taxes out of the compass of the town; which

Ch. 15 R. 2. was followed by another in the 15th year of the same reign, enabling the mayor, bailiffs, &c. and their successors, to take stone out of the quarries in Cheylesmore park; and also granting to them certain waste lands, &c. therein mentioned, towards the repair of the walls, and payment of the fee-farm rent. The same letters patent likewise enabled "the mayor, recorder, and four of the most substantial inhabitants, to inquire of, hear and determine all causes and complaints that

Justices of the peace. might concern the office of justices of the peace, touching labourers and artificers, so that the justices within the county of Warwick should not

Justices of the county of Warwick not to intermeddle. intermeddle in this town, nor the suburbs thereof, in any of those cases. And that the said mayor, bailiffs, &c. should have the benefit of all fines, issues and profits accruing by their said justiceship, as fully as any of their predecessors ever had, with all other customs and privileges granted to them by the same king's progenitors."

Ch. 2 Hen. 6. Hen. VI, in the 2d year of his reign, confirmed

the charter of Ed. III, containing the grant of a mayor, bailiffs, &c.

The next and most important charter relating to this place is that dated 26th November, 30th Hen. VI. (*d*), by which Coventry, &c. is made a county of itself, as follows:— Ch. 30 Hen. 6.

"The king to the archbishops, &c. greeting, Know ye, that by reason of the special and internal affection which we bear and have towards our city or town of Coventry, and the mayor, bailiffs and commonalty of the said city or town, and in consideration of the good and faithful conduct of the said mayor, bailiffs and commonalty, and for other causes us especially moving, willing to provide for their immunity and more safe quiet, of our special grace, and of our mere motion and certain knowledge, have granted, and by these presents do, for us, our heirs and successors, grant to the aforesaid mayor, bailiffs and commonalty, and their heirs and successors, that the city or town of Coventry aforesaid, with Radford, Keresley, Folkeshull, Eccleshall, Anstey, Shulton, Calvedon, Wikeney, Henley, the Woodend, Stoke, Bigginge, Whitley, Pinleye, Asthull, Horwell, Hornechall and Whabberley, hamlets of the city or town aforesaid, and that parcel of Sowne, and that parcel of Stirchall, which are

(*d*) This charter, and the extracts from that of the 19th Jac. I, are taken from the translations of those charters, produced before the committee on the Warwickshire election.

Ch. 30 Hen. 6.

within the liberties of the city or town aforesaid, and the precincts of the city, town, hamlets and parcels aforesaid, which now are within and part of the county of Warwick, shall, from the feast of St. Nicholas next coming, be one entire county of itself, corporated in deed and in name, and distinct and wholly separated from the said county of Warwick for ever, and not parcel of the said county of Warwick; and that the same county so corporated from the said county of Warwick shall be for ever distinctly and separately named, called and entitled the County of the City of Coventry.

Coventry, &c. to be a distinct county.

Also, we will that the mayor and bailiffs of the said city or town hereafter to be elected, shall be for ever elected at, and in the same times, place, manner and form as they or any of them were or was accustomed to be elected or made in the time of Edward of renowned memory, late king of England, the third after the Conquest, our progenitor, by force of other his letters patent, or in the time of any other our progenitors, kings of England, by force of their letters patent, or in any other manner. Also, we will and have granted, and by these presents, for us, our heirs and successors, do grant to the aforesaid mayor, bailiffs and commonalty, and their successors for ever, that the bailiffs of the said city or town who shall be on the morrow of the said feast of St. Nicholas, and the bailiffs of the said city or town who shall be thenceforth elected in manner and form aforesaid, so long as they continue bailiffs of the said

Mayor how to be elected.

Bailiffs to be sheriffs.

city, shall, from the aforesaid feast, be sheriffs of the said city of Coventry for ever, and also that they shall be for ever bailiffs of the said city or town; and shall make, exercise and execute the office of bailiffs there according to the form and effect of the accustomed franchises and liberties in the same city or town, heretofore used there by force of the grants of divers of our progenitors and ancestors, (this present grant in anywise notwithstanding). And that as well they who shall be the sheriffs of the city aforesaid on the said morrow of St. Nicholas next, as all others who shall thenceforth be sheriffs of the said city in all times to come, after they shall become sheriffs of the said city, shall, in due form, take an oath before the mayor of the city or town aforesaid for the time being, and not before any other, in the guildhall of the said city, and not elsewhere, duly and faithfully to perform, exercise and execute their office of sheriff of the said county of the city aforesaid so long as they shall continue in the office of sheriff there, and that the mayor of the said city or town for the time being shall from time to time, without delay, certify the names of such sheriffs of the said county of the city aforesaid, so sworn by his letters patent, to be sealed with the seal of his office of mayor, into the chancery of us and of our heirs. And that such sheriffs of the city aforesaid for the time being shall hold a county court of our city aforesaid within that city, from month to month, to be

Ch. 30 Hen. 6.

Sheriffs how to be sworn.

To hold a county court.

Ch. 20 Hen. 6.

holden yearly on Tuesday for ever; and that they shall have and exercise all such power, jurisdiction, liberties and authorities, and all other things pertaining to the office of sheriff in the said city or town, hamlets, parcels and precincts thereof, as and which any other sheriffs of us, and of our heirs within our kingdom of England, have, shall and ought to have in their bailiwicks; and that we, our heirs and successors, all and singular bills, writs, precepts and mandates of us, our heirs and successors, from whatsoever cause, matter or thing arising, or to arise within the city or town, hamlets, parcels and precincts aforesaid, which, after the aforesaid feast of St. Nicholas, shall be to be directed or executed, and which would be directed to the sheriff of the county of Warwick, and by him to be served and executed, if the said city or town, hamlets, parcels and precincts had not been made an entire county of itself, after the same feast we will cause to be made and directed, and our heirs and successors aforesaid shall cause to be made and directed, to the sheriffs of the city of Coventry for the time being. And that none other sheriff of our kingdom of England, or the bailiff and servant of any sheriff of our said kingdom, except only the sheriffs of us and of our heirs of the city aforesaid, and their bailiffs, ministers and servants, shall in anywise enter the same city or town, hamlets, parcels and precincts after the feast aforesaid, in anywise to exercise and execute any thing which

All writs, &c. to be directed to the sheriffs of Coventry.

shall pertain to the office of sheriff there, neither shall he in any manner intermeddle himself therein; and that every sheriff of the said county, and the bailiffs of the city or town aforesaid, who, after the aforesaid feast, shall be sheriff or bailiff thereof, or for the issues of his office to us and our heirs pertaining, or which ought to belong, may every year severally account before the treasurer and barons of the Exchequer of us and of our heirs, or before the barons of the same Exchequer, and may do all things to the office of them or either of them belonging, or for the office of them or either of them for ever, by their sufficient attornies, constituted by their letters patent, to be directed to the aforesaid barons; and that no sheriff of the said city, or the bailiffs of the city or town aforesaid, shall be in anywise compelled or bound personally to come out of the said county to account for anything belonging to the offices of them or either of them, or to do any thing for the offices of them or either of them, provided they will make their attornies to do the same in form aforesaid. Also we have granted, and by these presents do grant to the said mayor, bailiffs and commonalty, and their successors, that the coroner of our city or town of Coventry aforesaid, who shall be coroner there on the said morrow of St. Nicholas, and his successors who shall thenceforth be coroners of the said city or town, shall be coroners of the county of the city aforesaid for ever, and that they may and shall have

Ch. 36 Hen. 6.

Sheriffs may account at the Exchequer, by attorney.

Coroner of the city to be coroner of the county of the city.

Ch. 30 Hen. 6.

power to exercise the office of coroner within the said county of the city aforesaid after the said feast, and shall have all such powers and jurisdiction as coroners of the said county of the city aforesaid, as well in the presence of us and of our heirs as in the absence of us and our heirs, of and in all things, causes, matters, and other articles and adjuncts whatsoever pertaining or belonging to the office of coroner, as any coroner or coroners of us, or of our predecessors, within any county of our kingdom of England, by reason of the office of coroner there, hath or have been accustomed, or ought to have or exercise; and that the coroner of the city or town aforesaid, and his successors, coroners of the said city or town, shall be for ever clerks for recognizances of debts, to be taken according to the form of the statutes enacted for merchants, immediately from the time at which such office of clerk in the city aforesaid, from whatever cause, shall next happen to be vacant, and that the smaller part of the seal ordained for taking such recognizances there shall remain to be kept in the custody of the said clerk for the time being for ever. Also we have granted, and by these presents do grant to the said mayor, bailiffs and commonalty, and their successors, that the same mayor and his successors, who shall be mayors of the said city or town for the time being, shall have, occupy and exercise within the city or town, hamlets, parcels and precincts aforesaid, the office of clerk of the market of the

Coroner to be clerk for taking recognizances of debts.

Mayor to be clerk of the market.

household of us and of our heirs, together with all things to the same office of clerk of the market in anywise pertaining or belonging, for all and singular things, causes or matters concerning that office, made or happening within the same city or town, hamlets, parcels and precincts, as well in the presence of us, our heirs and successors, as in the absence of us, our heirs and successors, together with all fines and redemptions therefrom coming to be levied and taken to the use and profit of the said mayor, bailiffs and commonalty, and their successors for ever. And that at no time hereafter shall any clerk of the market of the household of us, and of our successors, except the mayor of the city or town aforesaid for the time being, enter into the city or town, hamlets, parcels or precincts aforesaid, to do or execute any thing which shall pertain to the office of clerk of the market there, neither shall he in anywise intermeddle himself concerning any thing in the same city or town, hamlets, parcels and precincts, by colour of his office. Moreover, of our more ample grace, we have granted for us, our heirs and successors, to the said mayor, bailiffs and commonalty, and their successors, and to the inhabitants (*e*) and resiants

Ch. 30 Hen. 6

All fines, &c. granted to the mayor, &c.

Mayor to execute the office of steward and marshal of the household.

(*e*) This is the first time the term 'inhabitant or resiant' is used in this charter. The word 'inhabitant' is also used in a similar manner in that part which grants an exemption from tolls; but neither are inserted in that which reserves and confirms all former grants and privileges to the corporate body; *vide post*. p. 155.

Ch. 30 Hen. 6.

within the said city or town of Coventry, hamlets, parcels and precincts aforesaid, who now are, or who hereafter shall be, for the greater tranquillity, quiet, profit and increase of the city or town, hamlets and parcels aforesaid, that the same mayor who now is, and his successors, mayors of the said city or town for the time being, shall do, exercise and execute, all and singular the things which to the office of steward and marshal of the household of us, and of our heirs, shall in anywise pertain or belong, within the city or town, hamlets, parcels and precincts aforesaid; and shall do, exercise and execute the same without contradiction of us, our heirs and successors whomsoever, as freely, quietly and entirely as any steward and marshal of the household of us, and of our heirs, or any of them, at any time heretofore have or hath, or could or ought in anywise to have done, exercised and executed their offices, and all and singular the things to those offices, and every of them, pertaining or belonging. And that the said mayor, sheriffs, bailiffs, or any inhabitant or resiant within the city or town, hamlets, parcels and precincts aforesaid, shall be in nowise bound to admit or to execute any precept or mandate of the steward and marshal of the household of us, our heirs or successors, or of any of their lieutenants or deputies, or lieutenant or deputy of any of them, or to appear before them, or any of them, for any cause, thing, or matter whatsoever, or to obey such precept or mandate. And that

no steward or marshal of the household of us, and of our heirs or successors, nor their deputies, or any ministers of the court of the marshal of the household aforesaid, (except the aforesaid mayor and his successors, and their ministers,) shall enter the city or town, hamlets, parts, parcels and precincts aforesaid, in the presence of us, our heirs or successors, or in the absence of us, our heirs or successors, to make or hold any session or inquisition, or any pleas there, or to make, exercise or execute any precept of us, our heirs or successors, or of any steward and marshal of the household aforesaid, or concerning any other the offices or office of any of them, or of or for any thing, cause or matter whatsoever arising. Moreover, we have granted to the said mayor, bailiffs and commonalty, and to the burgesses and merchants of the city or town aforesaid, and to the inhabitants within the city or town, hamlets, parcels and precincts aforesaid, that they and their successors for ever shall be quit of toll or tollage, passage, pontage, murage, paviage, of or for their wares and merchandizes, within and throughout our whole land of Ireland. Moreover, we will and grant to the aforesaid mayor, bailiffs and commonalty, and their successors, that they shall have, hold and use, all and singular other the franchises, liberties, immunities, quittances and customs, from article to article, which the aforesaid mayor, bailiffs and commonalty, or their ancestors or predecessors, by whatsoever names,

Ch. 30. Hen. 6.

Freedom from toll, &c.

Reservation of privileges.

Ch. 30 Hen. 6. have had and used, before our present grant, by the grant of our progenitors or according to the custom there, our present grant, or anything in the same contained, in anywise notwithstanding, although express mention of the true annual value of the premises by us, by tenor of these presents, granted, or of any other gifts and grants to the aforesaid mayor, bailiffs and commonalty, or to the burgesses of Coventry, or to the merchants of the town of Coventry, or to the burgesses, honest men of the town of Coventry, or to the men of Coventry, tenants of the manor of Cheilesmore, to the bailiffs and men and tenants of the manor of Cheilesmore, or to the mayor, bailiffs and men of the town of Coventry, or to the mayor, bailiffs and commonalty of the town of Coventry, or to the burgesses of the town of Coventry, or to the mayor, bailiffs, citizens and honest men of the city of Coventry, by us or our progenitors heretofore made, is not made in these presents, or any statute, act, ordinance, restriction or mandate to the contrary, or any other cause, thing or matter whatsoever, notwithstanding. Given, &c. at West', the 26th day of Nov. &c."

Ch. 19 Jac. 1. In the 19th year of the reign of Jac. I, Coventry received another charter, which reciting, "that whereas our city of Coventry is an ancient city and borough, and the citizens and burgesses of the same city and borough were and yet are incorporated or mentioned to be incorporated, as well by prescription or custom, &c. as by divers

charters and letters patent, as well by the name of the mayor, bailiffs and commonalty of the city or town of Coventry, as by divers and several other names of incorporation; for the better certainty thereof, and that one certain name of incorporation may be hereafter observed," grants that the mayor, bailiffs and commonalty of Coventry, and their successors, should hereafter be one body corporate, &c. by the name of the mayor, bailiffs and commonalty of the city or town of Coventry, and by that name to plead and be impleaded; and further confirms to them all and singular the liberties, privileges, &c. by any charters or letters patent heretofore granted.

Ch. 19 Jac. 1.

Incorporated by the name of the mayor, &c.

The same charter also recites and confirms charters of confirmation of Ed. IV, Hen. VII, Hen. VIII, Mary, Eliz.; also a charter of the 6th of Ed. VI, granting to the same body liberty to hold a fair within the city, and the other charters before noticed (particularly that of the 30th Hen. VI, which is set out at length); and then proceeds to make further regulations respecting the election and duties of the different corporate officers, and of a common council; regulates the appropriation of the fines and amerciaments arising from the minor civic courts, and the holding of fairs and markets, and creates the mayor and aldermen for the time being justices of the peace for the county of the city of Coventry, and the precincts thereof, to the exclusion of all other justices; appoints a court of orphans, and gives

Confirmation of former charters.

Ch. 19 Jac. 1.

power to the said corporation to hold lands, &c. (*f*).

Municipal government.

This continues to be the governing charter of Coventry; and under it the municipal government is vested in a mayor, ten aldermen, a recorder, two bailiffs, two sheriffs, a steward, two chamberlains, a coroner, two wardens, and other inferior officers.

Lord lieutenant.

The lord lieutenant of the county of Warwick is also the lieutenant for Coventry, but the county of the city is not specially named in his appointment.

Justices of the peace.

The mayor and aldermen for the time being are the justices of the peace for the county of the city.

Returning officers.

The sheriffs are the returning officers.

Right of election.

Journals, Nov. 20, 1722, v. 20, p. 50.

The right of election is "in such freemen as have served seven years apprenticeship to one and the same trade, in the city or suburbs, and do not receive alms or weekly charity, such freemen being duly sworn and enrolled."

Resolution, 1821.

Freeholds situate within the county of the city of Coventry do not confer votes for the knights of the shire for the county of Warwick.

Prynn. Reg. 954. Willis, Not. Parl. 58.

Coventry first returned members to parliament in the 23d of Ed. I, and to several parliaments in each of the succeeding reigns, until that of Ed. IV, from which period it has returned members regularly.

(*f*) For further particulars, *vid.* the documentary evidence given in the annexed report.

Petitions.

Several petitions were presented against different returns for Coventry, between the years 1627 and 1723, but no notice is taken of the freeholders, or of any person claiming to vote as such.

Most of the petitions alluded to were grounded either on the alleged misconduct of the returning officers, the riots and tumults which occurred during the election, or the bribery and corrupt practices of the parties; but upon the petitions which were presented in 1708-11, & 22, the House came to three several resolutions upon the right of voting.

Petition, 1708.

Nov. 24, 1708, Mr. Robert Craven presented a petition against the return of Sir Orlando Bridgeman and Mr. Hopkins; upon which occasion, among other matters, the right of election was argued by counsel, and it was resolved by the House, "That the right of electing citizens to serve in parliament for this city, is in such persons who have served apprenticeships for seven years, within the said city, to one and the same trade, not receiving alms or constant charity."

Journals, Mar. 1, 1708, v. 16, p. 129.

Petition, 1710.

In Nov. 1710, a new writ issued in consequence of the death of Mr. Craven, when Mr. Grey, Sir Orlando Bridgman, Mr. Hopkins, and Mr. Robert Craven, were candidates. A petition was subsequently presented against the return of Mr. Grey, and one from the Company of Fullers, stating that they had always enjoyed the privileges of freemen up to Oct. 1710, when, in consequence of the

Petition, 1710.

foregoing resolution of 1708, the sheriffs had refused their votes; they also stated, that they and their predecessors were obliged to live out of the city for the benefit of their fulling mills, but that, notwithstanding, they paid to church and poor, and served all offices belonging to the companies of the city, and prayed that their right might be ascertained. Evidence of the usage affecting this right was received; and the committee resolved, and the House agreed, "That the members of the Company of Fullers within this city, being freemen not receiving alms, have a right to vote in the election of members to serve in parliament for this city.

Resolution, Mar. 13, 1711. Journals, v. 17, p. 136.

"That such freemen of the city of Coventry as do not receive alms or weekly charity, and have served seven years apprenticeship within the said city or the suburbs thereof, have a right to vote in the election of members to serve in parliament for this city."

Petition, 1722.

In Oct. 1722, a petition was presented by Mr. Fulwar Craven and Sir Fulwar Skipwith against the return of Sir Adolphus Oughton and Mr. Neale; upon which occasion, also, evidence was received as to the right of voting, when the House resolved,

Resolution Nov. 20, 1722. Journals, v. 20, p. 60.

"That the right of election of citizens to serve in parliament for the said city, is in such freemen as have served seven years apprenticeship to one and the same trade, in the said city or the suburbs thereof, and do not receive alms or weekly

charity; such freemen being duly sworn and enrolled." Petition, 1708.

This remains the last determination upon the right of election for Coventry, and has been further secured and regulated by an act of parliament, which reciting the resolution of the House of Commons of the 20th of Nov. 1722, and that great frauds and abuses had been committed in clandestinely admitting persons during the last election, who had no right to their freedom, to prevent such practices in future, makes several regulations as to the mode in which persons should be admitted to their freedom, and enacts "that at every election of members to serve in parliament for the said city, *every person* who shall come to poll at such election, shall, if required by any candidate at such election, or by any two or more persons having a right to vote at such elections, previous to his being permitted to poll, take the following oath: 'You do swear that your name is *A. B.*; and that you have been admitted to the freedom of the city of Coventry under indentures or deeds of apprenticeship; and that you have served seven years apprenticeship to one and the same trade, in the said city or the suburbs thereof; and that you are of the age of twenty-one years and upwards, and have not been polled before at this election." 21 G. 3, c 54. s. 7. Freeman's oath.

It will be observed, on comparing the 7th sect. of the 21st G. III, c. 54, with the resolution of the House of Commons of 1722, that the former

Observation on stat. 21 G. 3.

has gone one step further than the latter towards confining the right of election in the freemen; the resolution being declaratory only, and the 7th sect. positively enacting that every person, if required, should take the freeman's oath before he polls. This difference is at present immaterial, as none but freemen claim to vote for Coventry; but if any claim were now revived or set up, on the part of the freeholders of the county of the city, to participate in the election of the city members, the oath imposed by the 21 G. III. would form an effectual bar to their admission. But it might have been held otherwise, if the resolution of 1722 stood by itself; as that may be construed as declaratory only of what should thenceforth entitle the freemen to vote, and not as excluding any other class of voters, whose claim was not then before the committee.

Petitions, 1803.

1 Peck. 93.
2 Peck. 273.

Petitions were presented against the returns for Coventry, both in 1803 and 1804, and the proceedings thereon will be found in Mr. Peckwell's Reports; but no question arose on the right of voting in either case, as a point of qualification was alone decided in the first instance, and no evidence was adduced in support of the petition in the second.

COUNTY OF THE CITY OF EXETER.

EXETER was very early a place of importance, and during the time of the Saxons was governed by a portreeve; the city was then divided into four hundreds or wards, over each of which an alderman presided. Jenkins's Hist. Exeter, p. 24.

Hen. II. granted a charter to Exeter, confirming former privileges, exempting the citizens from customs and town duties, &c. and granting to them the custody of the castle. Ch. 1. Hen. 2.

R. I, in the fifth year of his reign, granted a charter of confirmation. Ch. R. 1.

Exeter was at this period governed by provosts, who were nominated by the earls of Devonshire; but in the year 1200, king John enabled the citizens, by charter, to elect yearly a mayor and two bailiffs from among themselves, for the government of the city, and likewise confirmed their former privileges. Ch. 2 John.

Hen. III. granted two charters of confirmation; and Ed. I. conferred a similar favour in 1275. Ch. Hen. 3. Ch. 4 Ed. 1.

In 1312, Ed. II. made the mayor and bailiffs of the city justices of the peace within the same. Ch. Ed. 2.

By a charter granted in 1329, Ed. III. gave the citizens cognizance of pleas, &c.; and in 1380, Ch. Ed. 3. Ch. 3 R. 2.

Ch. 3 R. 2. R. II. confirmed the former charters, and granted additional privileges to the citizens.

Ch. 13 H. 7. Hen. VII, in the 13th year of his reign, granted a charter regulating the elections of the mayor, bailiffs, common council, and other corporate officers.

Ch. 29 Hen. 8. By letters patent, dated Aug. 3, 29 Hen. VIII, Exeter was separated from Devonshire, and made a county of itself, as follows:

(a) "Rex omib̃s ad quos &c. sltem Sciatis quod nos ob amorem quam erga dilectos subjectos nostros majorem ballivos et cōitatem civitatæ nostræ Exon in com. nostro Devon et civitatem illam gerimus habemus omnes et singulas cartas donationes concessiones lib̃tates et franch̃as tam per nos, quam per diversos antecessores et progenitores nostros reges Angliæ præfatis majori ballivis et cōitati civitatis prædictæ Exon p̃antea successoribus suis dum major ballivi et cōitas ejusdem civitatis extiterunt ac ballivis et civibus ejusdem civitatis et successoribus suis cum sic ballivi et cives civitatis illius existebant ante hæc tempora fac. et concess. unica consuetudinibus ibidem preantea usitata approbamus et ratificamus ac pro nob. hered. et succōrib. nostris quantum in nob. est tenore presentiu^m concedimus et confirmamus, et preterea nos cupientes pacem et tranquillitatem in civitate predicta de tempore in tempus a modo

(a) This is transcribed from a copy of this charter preserved in the Exchequer-office at Somerset-house.

augmentari de gratia nostra ac ex certa scientia, et mero motu, nostr. concessimus, et per presentes concedimus, pro nobis, hered. et successorib. nostris, quantum in nobis, præfatis majori, ballivis, et cōitati, et successorib. suis in perpetuum quod predicta civitas Exon de cetero sit unus integer com. per se corporatus in re et nomine distinctus et penitus separatus a dicto com. nostro Devon in perpetuum, et quod eadem civitas sic corporat. et a dicto. com. nostro Devon distinctus et separatus, com. civitatis Exon ex nunc perpetuo et in perpetuum, vocatur nuncupabitur et reputab." Ch. 29 Hen. 8.

The same charter provided that the mayor, recorder and aldermen, should be justices of the peace within the limits of the county of the city, with the same powers as those of the county of Devon, excluding them and all other justices from any interference within the county of the city, &c. &c. Justices of the peace.

"Ac insuper de grã nostr. spãli concessimus et per presentes concedimus prefatis majori ballivis et cōitati com. civitatis nostræ Exon predict. hered. et successorib. suis quod ipsi in consideracoe presolutioni feodi nostro tam magni sigilli nostri quam parvi quæ jam dudo in Hanaperio nostro soluerunt pro aliis literis nostris patentibus prefatis majori ballivis et cōitati civitates prædictæ nuper confec. ipsi et successores imperpetuum habeant gaudeant et teneant omnia et singula premissa in hiis litteris nostris patent. superius Confirmation of privileges.

Ch. 29 Hen. 8. specificat. ac dictis majori ballivis et cōitati com. civitatis predictæ concess. absque feodo magno vel parvo in Hanaperio nostro solvend. absque compoto respons. seu aliquo alio nob. hæred. vel suc. nostris pro premissis vel aliquo premissor. alteratione vel occasione premiss. vel. eor. alicujus per predictos majorem ballivos et cōitatem vel successores suos aut per prefat. vic. vel successores suos reddend. solvend. seu faciunt salve sempre reservat. nob. hered. et successor. nostris eadem annuati feod. ferm. quam dicti major ballivi et cōitas civitatis prædictæ annuatim nob. solvere tenentur."

Stat. 2 & 3 Ed. 6.

But the existence of Exeter as a county does not depend upon charter only, as in 2d & 3d (*b*) Ed. VI. an act passed, intituled, "An Acte for then larging of the Liberties of the Citie of Excestre;" and as this Act is not printed in any collection of the statutes, and enumerates and provides for most of those privileges which mark the corporate counties, I shall insert it at length.

"Humblye sheweth unto youre mooste excellent Majestye youre obedyente and loving subjects the mayo bayliffs and comynaltie of your citie of Exceter that where of late sovraigne lorde of

(*b*) The transcript of this Act, given above, is taken from a copy printed in the appendix to Jenkins's Hist. of Exeter, and which purports to have been given by George Rose, Cler. Parliament, and to have been examined with the original record in the parliament office, 5th Oct. 1799.

famous and moste worthie memorie kinge Henry the viij father yor. highnes by his mooste gracyous lr̃es patents under his great scealle of Englande bearinge date the xxiij daye off Auguste in xxxth yere of his mooste noble raigne for the love zealle and ffavor whiche he have towards his lovinge subjects the mayors baylyffs comynaltie of his sayde citie of Exceter and also towardes the sayde citye did not onlye ratyfie and confirme all such grauntes as were by hyme or by any of his noble p̃genytors gyven and granted unto the mayors bayliffs and com̃altie of the sayde citye or any of the inhabitants thereof but also by his sayde lr̃es patents of a more larger benyvolence did erecte ordeyne constitute and make the sayde citie to be a countye in yt selffe clearely seperated and devyded from the countye of Devon and for the better mayntenance of the same did gyve and graunte unto the sayde mayor bayliffs and comynaltie and to their successors dyvors and sundrye jurysdiceyons preheamynences liberties ffraunchesses and privileges to be exercysed and within the sayde countie of the sayde citie of Exceter as by the saide lr̃es patents more playnlie yt doth and maye appeare And forasmuche as it is nowe doubtefull where and howe farre the aunceynte boundes and lymitts of the lyb̃ties of the saide cytie doth extende and for lacke of certen knowledge and lymittacon thereof ryseth not onely at dyvers tymes varyaunce betweene the officers of the sayde countye of the sayde citie of

Stat. 2 & 3 Ed. 6.

Stat. 2 & 3 Ed. 6.

Exceter and the sheriffe and the officers of the sayde countye of Devon and the byshoppe of Exceter and the dean and chapiter of the cathedrall churche of Saynte Peter of Exceter and their mynysters for and concernynge the servynge and executinge of processe within certain places surmised by the sayde mayor bayliffs and comynaltie of the sayde countye of the sayde citie of Exceter to be within the lymitts and boundes of the saide countye of the saide citie and denyed by the sayde sheriffe of the sayde countye of Devon and the sayde byshoppe deane and chapiter and their officers to be within anye of the boundes of the saide countye of the saide citie but also th. inhabitants of divers houses and habitations being sett and buylded in certain places within the sayde cytie and suburbes of the same and in the confyne and border of bothe the sayde countyes callinge and naminge themselves for the maintenance of their unthriftie rule which they kepe there some tyme when for there purpose yt so best serveth to be von of the sayd countyes and some tyme of the other and by occasion thereof in and to these howses resorte (as it were to a den and refuge for unthrifties inmemoral sortes of dyvers carders nyghte watchers vagabonds theves bawdes hores and suche other yvell and lewde p̃sons whiche their dog lorke abyde and escape unpunyshed by reason that the lymitts of the sayde countye of the sayde citie are unknowne not onely to the great corrupcon of prentyses servaunts and chil-

dren broughte uppe within the sayde citie to the great anoyance of the sayde citie and of the inhabitants of the same But also to the great inquietacon and disturbance of other quarters thereabout which is to the greate mayntenance boldenynge and increase of theves robbers harlotts bawdes and sundrye vagabondes wch things within shorte tyme will be a greate cause of rewin and decaye of your gracys sayde citie and to the oppression and greate disquietinge of the sayde citie and the whole countrye thereaboute yf remedye be not provided For reformacyon whereof yf may please youre mooste excellent majesty wh. and by the assent of lordes spuall and temporall and the Commons of this present Parlyment assembled and by the authoritie of the same that the boundes and lymitts hereafter envening may be hadde reputed and taken for the undoughted lymitts devysyon and boundes betwene the sayde countye of the sayde citie of Exceter taken for no part nor parcell of the said countye of Devon, but clearlye seperated from the sayde county of Devon evermore withoute questyon color doughte or ambyguytie which boundes of the sayde countye of the sayde citie as well within the walls of the sayde citie as withoute shall be and begynne as hereafter followeth *that is to say ffirste* at and from the estegate of the sayde citie together with all the wholle precynte and circuyte of the parishe off Saynte Sydwell withoute the sayde estegate and with all the inhabitaunts and

Stat. 2 & 3 Ed. 6.

Stat. 2 & 3 Ed. 6.

soyle of the same parish unto the sowthegate of the same citie with all the wholle circuyte and precyncte of the parrishe of the Trynytie there and with all the inhabitaunts and soyle of the same parrishe withoute the sayde southegate, and at and from the sayde southegate with the whole cyrcuyte and precynte of the sayde wholle parrishe of the Trynytie aforesayde unto the westegate of the sayde cytie together with all the whole circuyts and p'cinte of the parrishes of Saynte Edmondes and Saynte Marye Stappes unto the greate ryver of Exe and with all the inhabitaunts and soyle within the sayde parrishes unto the grete ryver of Exe and withoute the sayd westgate and at and from the sayde west gate with the cyrcuyte of the saide wholle parrishes of Saynte Edmondes and Saynte Marye Stappes as before is sayde unto the northgate of the sayde citie together with the cyrcuyte and precynte of the whole parrishe of Saynte David, called Saynte David is Downe, without the northgate of the sayde citie and with all the inhabitaunts and soile within the sayde parrishe of Saynte David is Downe, and at and from the sayde northegate with the cyrcuyte and precyncte of the same whole parrishe of Saynte David is Downe unto the estegate aforesayde,—And that also by the authoritie aforesaide yt maye be enacted that all manner of howses lands tenements possõns grounds and soyle as well within the walls of the sayde citie and suburbes of the same as also all

Stat. 2 & 3 Ed. 6.

howses lands tenements groundes and soyle sette layinge and beinge within the parrishes afore lymytted and expressed and every of theym shall be at all tyme and tymes from henseforthe taken accepted, reputed knowne accompted to be parcell of and within the sayde countye of the sayde citie of Exceter and to be no parte nor parcell of the sayde countye of Devon and that it may be fferder enacted by the authority aforesayde that as well the sheriffe of the sayde countye of the sayde citie of Exceter for the time being his deputies and mynisters as also the officers and mynisters of the sayde mayor bayliffe and constable of the sayde citie of Exceter and every of them for the time beinge shall and may lawfullye at all tyme and tymes from hensforthe execute and serve within the sayde countye of the sayde citie of Exceter all and all manner of wryttes precepts and processes to them or any of them directed or delyvered as well from the king's majesty his heirs or successors or from any of his justices as also from the sayde mayor bayliffs and comynalties or their successors or any other their officers or any of them in suche manner and forme as the sheriffs of the sayde countye of Devon justices of peace or other the kinges officers or mynisters of the sayde countye of Devon myght have lawfully done before the makynge of this acte and statute. And furder to doo and execute all and every other lawfull acte and thinge within the sayde countye of the sayde citye of Exceter in as ample

Stat. 2 & 3 Ed. 6.

and large manner as the sheriffe of the sayde countye of Devon justices of peace or other the kinges officers or mynisters of the s^d countye of Devon might have lawfullye doon before the makynge of this acte. Provided allways that the castell commonly called the castell of Exceter and the soyle of the same beinge within the walles of the saide castell and allso the common gayle of the sayde countye of Devon nye adjoininge to the said castell and the mansyon house of the same gayle with all such and singler other howses and buyldings belonging to the same shall not be accepted or taken to be within the citye of Exceter nor of any thereoff but shall be at all accepted reputed adjudged and demyd to be within and parcell of the sayde countye of Devon anything in this acte mencyoned resyted or expressed to the contrarye notwithstandinge. Provided also that this acte nor any thinge therein conteyned shall in anywise extend or be prieudicyall or hurtfull to the kinge his heires or successures or to the ryghte noble prince Edward duke of Somsett or to any of his heirs or to the sayde bysshoppe of Exceter or his successoures, the deane and chapiter of Exceter and their successoures or to any of theym or to any other person or persons their heires or successoures for or concerninge any liberties privileges courtes leetes fraunchises profitts prior to any proces judgment and ejectmentes to bee had in anye action or sute now depending or concerning the limitts and boundes

aforesayde excepted by this acte to bee off the sayde countye of the citie of Exceter but that they and everye of them shall and may lawfullye have hold use take exercise and enjoye all and syngler suche liberties prilẽgs courtes leetes fraunchises profitts and all other commodities and every of them whatsoever iñ suche lyke manner fourme and condĩcon as they or any of them lawfully had helde occupied or enioyed the same or any of them before the makinge of this acte, and in such maner and fourme as if this acte had never been made any thinge before in this acte to the contrarye notwithstandinge. Provided allwayes and beyt furder enacted that as well all and singler covenants graunts coposycons agreements recognisances and bonds obligatory had made or knowledged by the mayor bayliffs and comaltie of the sayde citie of Exceter or any of them unto the byshoppe deane and chapiter of the cathedral churche of Exceter or any of them as also all and singler such covenants graunts coposicons agreements recognisaunces and bonds obligatorie had made or knowledged by the sayde bysshoppe deane and chapiter or any of them to the sayde mayor bayliffs and comaltie or any of them for or concerninge any other thynge or thyngs then is expressed or mencyoned in this acte shall stande and be to all intents and purposes in effect force and strengeth as they weare before the makynge of this acte and as thoughe this acte had never

Stat. 2 & 3 Ed. 6.

Stat. 2 & 3 Ed. 6.

been had or made any thinge conteyned in this acte to the contrarye in anywise notwithstandinge."

Ch. Ed. 6.

Ed. VI. also conferred a charter upon the citizens, confirming former privileges, and granting to them and their successors the manor of Exeisland, which they had possessed at the time of the Conquest.

Ch. Elizabeth.

In 1561, the bishop obtained a commission from queen Elizabeth to act as a justice of peace within the limits of the city, but the mayor strongly opposed his acting in that capacity, as contrary to the charters of the city. This dispute was referred to the queen, who approved of the mayor's conduct, ordered the bishop to desist, and granted a charter of confirmation to the citizens.

Jenkins's Hist. Exeter, p. 123.

Ch. 3 Car. 1.

Car. I, in the third year of his reign, granted a charter, recognising Exeter as a county of itself; regulating the elections of the mayor, recorder, and other corporate officers; also appointing the mayor, recorder and aldermen, and their successors, justices of the peace for the county of the city, to the exclusion of all other justices; providing for the due administration of justice, and confirming all former charters and liberties, &c.

Justices of the peace.

The charters having been surrendered both to Car. II. and Jac. II, and new charters granted, the citizens were restored to their ancient charters, by a special order in council, dated Nov. 1, 1688, in consequence of Exeter having been omitted to

be named in the general proclamation, under the belief that the deed of surrender had not been recorded.

Former charters restored.

By a charter dated 25th April 1770, the privileges of this city were again confirmed, and the mayor, recorder and seven senior aldermen were made justices of the quorum.

Ch. 10 G. 3.

This city is governed by a mayor, recorder, sheriff, four bailiffs, twenty-four aldermen, and fourteen common councilmen. The lord lieutenant of the county of Devon is also appointed for the city of Exeter and county of the same.

Municipal government.

Lord lieutenant.

The mayor, recorder and aldermen are the justices of the peace for the county of the city.

The sheriff is the returning officer.

Returning officer.

The right of election for Exeter is in the freeholders of forty shillings per annum, who have been resident forty days, bed and board (*c*), (it need not be on their freeholds,) and the freemen.

Right of election.

Freeholds situate within the county of the city of Exeter do not confer votes for Devonshire.

Exeter has returned members to parliament since the 23d Ed. I.

Willis Not. Parl. v. 2, 268.

In the 27th Ed. I. a writ was directed to the mayor and bailiffs, directing them to return two burgesses, as follows: "Vobis præcipimus firmiter injungentes quod duos burgenses de provectiori-

Brady on Burghs, 65.

(*c*) This right of voting is inconsistent with the resolution of 1660 (*vide post*, p. 178); and I have been unable to ascertain how long it has been exercised, but have been informed that it was acted upon in 1761.

Writ, 27 Ed. 1. bus, discretioribus, et magis expertis burgensibus civitatis prædictæ de assensu ejusdem civitatis sine dilatione eligi, &c. Ita quod iidem burgenses pro se et communitatem civitatis, &c. sufficientem potestatem habent, &c."

The return was as hereunder written:

"Roberti de Brideport, manucaptores; { Johannes Spicer, Willielmus Wike.

"Roberti de Hugheton, manucaptores; { Willielmus Sleght, Richard Oliver.

"Responsio Roberti de Brideport *majoris civitatis Exon*, et Ricardi Oliver et Thomæ Spicer, *ballivorum* ejusdem civitatis prædictæ talis est. Quod ipsi eligerunt prædictos Robertum de Brideport et Robertum de Hugheton, burgenses dictæ civitatis, ad faciendum secundum tenorem istius brevis."

Carew, pt. 1, 240, c. 2. In the 27th Hen. VI. the sheriff of Devonshire returned the citizens for this city.

Journals. "March 26th, 1628. Mr. Hackwill reporteth from the committee of privileges for Exeter, Mr. Lynn and Mr. —— returned by one indenture, and Mr. Lynn and Mr. Jordan by another, a prescription, the mayor and common council nominated four, out of which the burgesses chose two. That the mayor and twenty-four nominated Mr. Lynn, Mr. Martyn, and two others, but not Mr. Jordan; but that Mr. Jordan was chosen by the greater number than Mr. Martyn; that the sheriff, upon the nomination of the four, had said they might choose another; that the late elections

according as now for Mr. Jordan." Upon the question, the election and return of Mr. Jordan good, and he to serve, and the other indenture to be taken off the file by the clerk of the crown. Upon this decision, the magistrates appear to have refused to pay Mr. Jordan's wages, as, January the 30th, it was "Moved, that where Mr. Jordan's election made by the commons of Exeter, allowed by the House, and that made by the magistrates rejected, the magistrates do now refuse to pay Mr. Jordan any wages out of lands given the city for that purpose, but pay the other burgess." Petition, 1628.

On the 5th of February the aldermen and town clerk of Exeter were ordered to attend the committee of privileges about Mr. Jordan's wages, but the result does not appear.

In the Journals of the 16th of April 1640, is the following entry :— Journals, v. 2, p. 3.

"The city of Exon, a town and county.—The writ directed to the sheriff.—The mayor desires to know whether he shall serve or no.

"*Ordered*, This case of the mayor of Exon to be referred to the committee of privileges, to look into precedents, and to take order for the settling of it for hereafter."

No report appears to have been made, and on the 5th May following parliament was dissolved.

In 1660, Mr. Turner reported from the committee of privileges and elections, on the double return for the city of Exeter; that upon the examination of the fact, it appeared there was a tumult

Petition, 1660.

at the time of the election; and that three questions were in the case; viz. Whether there was such a force as made the election void? Whether the sheriff did duly take the poll? and, Whether the freemen of the place alone, or the freemen and freeholders together, had right to elect? And that the committee resolved therein,—that although there was a tumult, yet there was no such force as to make the election void; that the poll was duly taken by the sheriff; and that the right of election belongs to the freemen (*d*); and were therefore of opinion, that Serjeant John Maynard, who had a greater number of the freemen's votes than Mr. Richard Ford and Thomas Bampfield, esq. (who was returned by both the indentures) are duly elected, and ought to sit.

Journals, 4th June, 1660, v. 8, p. 55.

(*d*) In consequence of this resolution I originally classed Exeter with those places of which the freeholds do not confer votes for the town members (*vide ante*, general observations, p. 39); and although I have since ascertained that those freeholders who have been resident, bed and board, for forty days, (*vide ante*, p. 175,) now vote in conjunction with the freemen, I have not altered the arrangement, because they do not vote in the same right as those of Bristol, &c. *Vide ante*, general observations, p. 28.

Owing to the sheet having been printed off I was unable to make this explanation at p. 39.

COUNTY OF THE CITY OF GLOUCESTER.

GLOUCESTER is an ancient borough, and in the time of the Confessor the inhabitants were styled the burgesses of the town of Gloucester. By this denomination they are described in the charters granted to them by Hen. II. and R. I, and by such continued to be called until they received letters patent of incorporation from king John. Rudder's Hist. of Gloucestershire, 121.

Gloucester was anciently a distinct hundred, and is supposed to have so continued till the reign of Ed. III. Ib. 84.

The first royal charter granted to the city appears to have been that of 22 Hen. II, by which he "granted to his burgesses of Gloucester the same customes and liberties through his whole land, of toll, and all other things, as the better citizens of London, and they of Westminster, enjoyed in the reign of king Hen. I." Ch. Hen. 2. Ib. 121.

By a charter bearing date 5th and 6th of May, 5 R. I, that king granted the borough to the burgesses at the yearly rent of 55*l.*, and 10*l.* increase. Ch. 5 R. 1.

King John, by charter in the 1st year of his Ch. 1 John.

Ch. 1 John. reign, granted them freedom from tolls, and power to elect two discreet burgesses to be bailiffs, likewise four coroners to hold the pleas of the crown; and by a second charter, in the 8th year of his reign, confirmed the burgesses in the possession of the town, at the accustomed rent.

Ch. 8 John.

Maddox Hist. Exchequer, 281.

Ch. 11 Hen. 3. Hen. III, by charter dated 6th April 1227, confirmed his father's grants.

Ch. Ed. 2. Edward II. and III. confirmed the former grants to this borough, as appears by an inspeximus of the charter of Ed. II, contained in that of Ed. III, which last bears date 10th January, in the 7th year of his reign; this charter likewise exempted the burgesses from murage, &c. throughout the kingdom.

Ch. 7 Ed. 3.

Ch. R. 2. Richard II. confirmed former privileges, and granted to the burgesses "the chattels of outlaws, felons and fugitives, and deodands; also all issues, fines, redemptions and amerciaments of all the burgesses; and all pleas, real and personal, within the vill, to be held in guildhall, with power and authority, as justices, to hear and determine all offences committed in the vill, except felony, which they were not to determine without special licence from the king," &c.

Rudder, 122.

Ch. from 1 H 4. to 2 Ed. 4. Hen. IV. Dec. 4, reg. 1°; Hen. V. Feb. 5, reg. 2°; Hen. VI. Oct. 26, reg. 2°, and Ed. IV. May 5, reg. 2°, granted charters of confirmation, as did likewise Rich. III, Sept. 2, 1st year of his reign; by which charter he abated 45 *l.* from the

Ch. 1 R. 3.

fee-farm rent payable by the burgesses, and incorporated them by the name of the mayor and burgesses of the town of Gloucester, and empowered them, by that name, to plead and be impleaded, with liberty to elect twelve aldermen, to whom were given the same powers as those of London.

Ch. 1 R. 3.

Gloucester a county of itself.

This charter also made the town of Gloucester a distinct county in the following terms, namely, that the town of Gloucester should be "unus integer comitatus per se, corporatus, distinctus et penitus separatus, a dicto comitatu Gloucestriensi, in perpetuum, et non parcellum ipsius comitatus Gloucestriensis, et quod idem comitatus sic corporatus, et a dicto comitatu Gloucestriensi distinctus et separatus, comitatus ville Gloucestrie pro perpetuo nominetur; salvis tamen et reservatis nobis et hæredibus nostris, quod justitiarii ad assisas in comitatu Gloucestriensi capiendas assignandi, justitiarii ad gaolam in comitatu Gloucestriensi liberandam assignandi, nec non justitiarii ad pacem in dicto comitatu Gloucestriensi conservandam assignandi, in tenendas sessiones suas, ac etiam vicecomites comitatus nostri Gloucestriensis, in tenendos comitatus suos, libere possint, et eorum quilibet possit, ingredi villam prædictam, et easdem sessiones et comitatus tenere de quibuscunque rebus et materiis extra dictum comitatum ville Gloucestrie et infra comitatum Gloucestriensem emergentibus, sicut ante hæc tempora tenere consueverunt presenti concessione nostra in aliquo non obstante."

Dudston and King's Barton.

By the same charter the hundreds of Dudston and King's Barton were separated from the county of Gloucester, and added to that of the county of the town of Gloucester. The bailiffs also from thenceforth were directed to perform and execute the office of sheriffs, and to be sworn as such before the mayor, who was thereby ordered to certify their names into Chancery when sworn. It likewise directed that the mayor should be elected by the twelve aldermen, and twelve of the most discreet burgesses; that there should be four serjeants at mace, two to wait on the mayor, and two on the sheriffs. That the mayor should be clerk of the market, steward and marshal of the king's household, and the king's escheator within the town and county.

Sheriffs.

That the sheriffs should hold county courts from month to month, and that they should exercise all the same powers, &c. belonging to the office of sheriff, within the limits of the town, as other sheriffs exercise in their bailiwicks; that all writs that would have been directed to the sheriff of the county, if the town had not been made a county itself, should be directed to them, and that no other sheriff or his bailiffs, &c. should enter, &c.

Ch. 5 Hen. 7.

Hen. VII, 5th year of his reign, granted a charter (*a*) of confirmation.

(*a*) In the special verdict found in the King *v.* Gough, this is "declared to be by authority of parliament." I have

Hen. VIII, by charter bearing date Sept. 3, 1542, given under the privy seal, and declared to be by authority of parliament, made Gloucester an episcopal see, and therein recognised the separation of Gloucester from the county at large, &c. and confirmed it as a distinct county in the following terms: "And (*b*) we also will and ordain, by these presents, that the said cathedral church shall be from henceforth for ever a cathedral church and see episcopal; and that our whole town of Gloucester be from henceforth and for ever a city; and we will and decree that the same be from henceforth for ever nominated and called the city of Gloucester. And whereas our late town or vill of Gloucester, together with all and singular the vills and hamlets of Dudston and King's Barton, near Gloucester, have for a long time past been an entire county by itself, rightfully incorporated in deed and name; and whereas one Thomas Payne, now mayor of our vill aforesaid, and the burgesses of our said late vill of Gloucester, now have, hold, and do enjoy several liberties, franchises and privileges within the said late vill of Gloucester, and within the

Ch. 33 Hen. 8.

Gloucester to be a city.

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not met with any confirmation of this finding, and have been informed there is no authority to support it.

(*b*) This extract, and those from the charter of 24 Car. II, are taken from the translations given in the Appendix to Rudder's History of Gloucestershire.

Ch. 33 Hen. 8.

county of the same vill; and the predecessors of them, the said now mayor and burgesses within our said late vill of Gloucester, and within the county of the same our late vill of Gloucester, by letters patent of our progenitors, by use, prescription, or otherwise, in what manner soever had, held and enjoyed the same as by right, and by the laws of our kingdom they lawfully might use, hold and enjoy the same, we will, and by these presents do grant, that now our city of Gloucester, together with all and singular the vills and hamlets of Dudston and King's Barton, be, and for ever hereafter shall be, the county of our city of Gloucester, by the same metes and bounds by which our said late vill of Gloucester, together with all and singular the vills and hamlets of Dudston and King's Barton aforesaid, is limited and known; and we do by these presents ordain, make, erect and establish our said city of Gloucester, together with the vills and hamlets of Dudston and King's Barton aforesaid, one entire county in deed and name, distinct and absolutely separated from our county of Gloucester for ever."

City of Gloucester to be the county of the city.

Rudder's App. p. xiii. No. 7.

Ch. 5 Ed. 6.

Another charter of confirmation was granted by Ed. VI, dated 1st March, 1552.

Ch. 3 Elizabeth.

Queen Elizabeth also, on 21st February, in the 3d year of her reign, granted a further charter of confirmation, and thereby made provision for the election of a recorder, and created the mayor,

recorder and aldermen, justices of the peace within the city, to the exclusion of all other justices. Ch. 3 Eliz.

Jac. I, by charter, made provision concerning the election of corporate and other inferior officers, which were further extended by a charter granted by Car. I. Ch. Jac. 1, Car. 1.

"By an ordinance of parliament, which was made April 3, 1648, all former letters patents, and charters of liberties, tolls, &c. granted to the city, were confirmed under the great seal of England. Rudder, 122.

In the 13th & 14th Car. II. an act passed "for the disuniting the hundreds of Dudston and King's Barton from the county of the city of Gloucester, and restoring them to be part of the county of Gloucester."

In the 16th year of the reign of Car. II. another charter was granted to the city, but this charter was afterwards surrendered into the hands of the crown, and on 18th April, 24th Car. II, the following charter was granted, which is the present governing charter of the city. Ch. 16 Car. 2.

"Charles II, &c. to all, &c. Whereas our city of Gloucester, and county or vill of the city of Gloucester, hath of long time been a burrough and vill, very ancient and populous, and by its situation borders upon the bank of the famous navigable river of Severn," &c.: "And whereas the citizens and burgesses of the said burrough, Ch. 24 Car. 2. Rudder App. No. 6.

Ch. 24 Car. 2.

vill or city, as well by land as by water, have, use and enjoy, divers franchises and privileges by virtue of several charters and letters patents, by our late most dear father, king Charles, of blessed memory, and divers other of our progenitors and predecessors, late kings and queens of England, and also by us to them and their predecessors heretofore granted, and also by prescription and customs in the aforesaid city or haven observed and kept: And whereas our beloved subjects, the mayor and burgesses of our city of Gloucester aforesaid, have, under their common seal, surrendered up our charter, bearing date on the 16th day of November, in the 16th year of our reign, to them before granted, which surrender we have accepted, and by these presents do accept: And whereas the aforesaid mayor and burgesses of the city of Gloucester have humbly besought us to grant anew to them, the mayor and burgesses of the city of Gloucester aforesaid, and their successors, all, and all manner of liberties, franchises, privileges, freedoms, inheritances and rights whatsoever, in the said former charters and grants of our ancestors contained; and that we would be pleased to confirm them for the future for ever: And that we, for the better government of the city aforesaid, would join the citizens and burgesses of the city of Gloucester, by whatsoever name or names of incorporation they were heretofore incorporated, or whether

they were before incorporated or not, in one body politic, by the name of the mayor and burgesses of the city of Gloucester, in the county of the same city; and that we would by our letters patents ratify and confirm it, or by what other means shall seem to us expedient."

The preamble having been set out at length, it will only be necessary to refer to, and recite such parts of this charter, as bear on the present question.

The charter first names the corporation in the following terms: "Know ye, That we, in consideration of your faithful service to us heretofore done, and hereafter to be done, of our especial grace and favour, of our own accord and mere motion, have willed, ordained, constituted, declared and granted, and by this present charter do will, ordain, constitute, declare and grant, that our city and vill of Gloucester, for the future for ever, be named and called by the name of the city of Gloucester, in the county of the city of Gloucester; and that the said city of Gloucester, in the county or vill of the city of Gloucester, henceforth for ever may and shall be one free city and county of itself; and that the citizens, burgesses and inhabitants of the city aforesaid, who, at the time of the aforesaid surrender, were burgesses or freemen of the city aforesaid, and their successors, may and shall hereafter be, by virtue of these presents, one body corporate and political, by the name of the mayor and burgesses

Named and called the County of the city of Gloucester.

Ch. 24 Car. 2.

of the city of Gloucester, in the county of the city of Gloucester; and we do, for us, our heirs and successors, by these presents, grant, erect, make, appoint, confirm and declare them, a body corporate and political, really and fully, by the name of the mayor and burgesses of the city of Gloucester, and of the county of the city of Gloucester, and by the same name may have a perpetual succession; and that they, by the name of the mayor and burgesses of the city of Gloucester, and of the county of the same city, may and shall hereafter for ever be fit persons, and in law capable of having, getting, receiving and possessing manors, lands and tenements, liberties, privileges, jurisdictions, franchises and inheritances, of what nature and kind soever they be, to them and their successors, in fee, or for ever, or for term of a year or years, or any otherwise howsoever: as also goods or chattels, or any other things, of what kind, name, nature or quality soever: as likewise to have and retain all manors, lands and tenements, liberties, privileges, jurisdictions franchises and inheritances whatsoever: as also all goods and chattels of which they were any way seised or possessed before the aforesaid surrender: and also to give, grant, let, set, assign or dispose of manors, lands, tenements and inheritances, and to do and execute all things by that name: and by the same name, the mayor and burgesses of the city of Gloucester, in the county of the city of Gloucester, may plead and be impleaded,

Enabled to hold land, &c.

How to plead and be impleaded.

answer and be answered, defend and be defended, in all courts and places, and before all judges, justices, and other persons and officers, of us, our heirs and successors whatsoever, and all others, in all and singular actions, suits, plaints, causes, matters and demands, of what kind or nature soever, in the same manner and form as all other our liege subjects of this kingdom of England, being any other body politic or incorporate within our kingdom of England, and fit men and capable in law, may have, get, receive, possess, enjoy, retain, give, grant, let, set, assign or dispose of, plead and be impleaded, answer and be answered, defend and be defended, do promise and execute." Ch. 24 Car. 2.

The charter then proceeds to give the mayor and burgesses a common seal, and to make provision for the number and appointment of the common council, aldermen and recorder, with power to make bye-laws; then to appoint a mayor, recorder, sheriffs, aldermen and common councilmen for the current year, and makes provisions to ensure the due acceptance and performance of the aforesaid offices, and gives them a power to increase the number of the common council; and then directs how the elections of the mayor, and the other corporate officers, shall be made, and how such as misbehave may be removed. The charter then grants that the mayor, the bishop of the diocese of Gloucester for the time being, the recorder of the city, the dean of the cathedral, Justices of the peace for the county of the city.

Ch. 24 Car. 2.

the aldermen of the city, and two such prebends of the said church as for the time being may by the king be appointed, should be "justices of the peace within the city of Gloucester, and county of the same, and limits, liberties and precincts of the said city, and county thereof," with power to hold sessions, &c. and other powers, the same as any other justices of any county, city, vill or borough within the realm; and then directs that the "sheriffs and coroners of the county of the city aforesaid shall make return of all juries, pannels, attachments and indentures by them taken, or henceforward to be taken before the mayor," &c. "in the same manner and form as other sheriffs and coroners within our kingdom of England, before any justices in the said kingdom, have been wont and ought to do."

Sheriffs, &c. to return juries.

Mayor clerk of the market, &c.

It likewise appoints the mayor for the time being clerk of the market, and steward and marshal of the household, within the limits, liberties and precincts of the said city, and county of the same: empowers the mayor, &c. to tax all burgesses, &c. for certain purposes; and declares that no bye-law of any guild or fraternity shall be binding, unless they have power to make such from the mayor, &c.

Mayor, &c. enabled to tax the burgesses.

Bye-laws.

Cognizance of pleas.

This charter then recites, that whereas by a charter of 20th R. II, the bailiffs of the vill of Gloucester were empowered to take cognizance of all pleas of land, &c. within the vill, &c. at the guildhall; and that whereas, by other letters

patent, the said vill of Gloucester was erected into a city, and enlarged by the annexation of aforesaid hundreds thereto, and that the bailiffs of the said vill had been altered into the mayor and sheriffs of the city aforesaid, and county of the same city, that therefore the king, being willing to extend and establish the privileges and jurisdictions of the aforesaid bailiffs of the vill aforesaid, &c. to the mayor, bailiffs and chamberlain of the city aforesaid, and sheriffs of the county of the same city, grants power to the mayor and burgesses to hold a court within the said city, before the mayor or his deputy and the sheriffs and bailiffs for the time being, to take cognizance of all pleas, &c. as well within the city aforesaid, as of the county of the same city, &c. in as ample a manner as in former times any bailiffs, &c. &c. had done.

Tolsey court.

The same provisions are next extended to the continuation of the Tolsey court.

County court.

It then directs the sheriffs to hold a county court for the county of the said city, on Tuesdays, from month to month, and a law day twice a year, at which all things should be done as are done at any other county court: that the coroner of the city, and others attending, should do and execute all the offices belonging to their respective places, and that the sheriffs of the county of the city aforesaid should exercise all such power and jurisdiction as other sheriffs, &c.

Coroners.

Ch. 24 Car. 2.

All precepts, &c. to be directed to the sheriffs.

That all precepts, &c. for any matter arising within the county of the said city, &c. should be directed to the sheriffs of the county of the city of Gloucester, and to no other sheriff; and no sheriff, &c. to interfere, "only the sheriffs of the county of the city of Gloucester, who are to keep a county court for the county of the city of Gloucester, to be holden in the usual place, in the charter of king Richard III. specified."

Recognizances.

The charter next reciting that R. II. having, by letters patent of the 21st year of his reign, empowered the bailiffs of the vill of Gloucester to take all recognizances whatsoever between merchant and merchants, and execution thereon to be made according to the statute of merchants, &c.; and that R. III. had, in the 1st year of his reign, by letters patent, "willed and granted that the aforesaid vill of Gloucester, together with all villages and hamlets within the hundreds of Dudston and King's Barton, near Gloucester, should be and remain one entire county by itself, incorporate for ever in deed and name, distinct; and that the bailiffs of the city aforesaid should for ever be sheriffs of the county of the said vill of Gloucester, doing and executing all things belonging as well to the office of bailiffs as sheriffs within the said vill, and county of the same; from which time the sheriffs have received, and were wont to receive, recognizances of debts, according to the form of the statute aforesaid;" and

that these letters patent did not direct in whose hands the greater or lesser seal of the recognizances should be kept; directs the sheriffs, &c. to take such recognizances, and to keep and use the aforesaid seals.

Ch. 24 Car. 2.

Seals to be kept by the sheriffs.

The charter then gives to the mayor and burgesses all fines, &c.; also confirms to them the right of levying certain tolls on grain and merchandize, &c. brought into the city.

Members of parliament.

"And whereas from the time of making these letters patents, in the 1st year of the reign of the said R. III, although by these letters patents the aforesaid vill of Gloucester was made a city, two burgesses only were summoned at all parliaments, elected by the major part of the burgesses, to serve and sit in parliament, never any other were chosen *knights* for the county of the same city; and yet it was a custom in other cities that two were chosen burgesses for such a city, and two more knights for the county of the same city: We, therefore, for the future, to avoid and abolish all scruple and doubt in that case, do will and ordain, and for us, our heirs and successors, by these presents, grant to the mayor and burgesses of the city aforesaid, and their successors, that upon summons of any parliament of us, our heirs or successors, it may and shall be lawful for the mayor and burgesses of the city aforesaid, and their successors, and the major part of them, at a full county court next after the summons to be holden in that case, lately made and provided, to elect, nominate and

Ch. 24 Car. 2.

return two (c) only discreet men of the said city to be burgesses for that city, and county of the same city; and that those two burgesses, so chosen, shall serve and sit in parliament as burgesses of the city aforesaid, and knights of the county of the same: and that the mayor and burgesses of the city aforesaid shall in no wise be forced and compelled to elect, nominate and return for burgesses of the city aforesaid, and knights of the county of the same, but they two only shall serve and sit in parliament, who shall from time to time be lawfully elected and returned by the mayor and burgesses of the city aforesaid, or the major part of them, according to the form of the statute in that case made and provied, as before the time of the reign of king Richard III, the like burgesses of parliament for the burrough or vill of Gloucester were wont to be nominated, elected and returned, and no otherwise."

Reservation of privileges.

"And whereas the bailiffs and burgesses of the vill of Gloucester of old held the said burrough, with the appurtenances, of the kings of England, in fee farme, by the yearly payment of sixty and five pounds of lawful money of England: We do, for us, our heirs and successors, by these presents,

(c) Mr. Rudder, at the end of his list of the members for the city of Gloucester, writes as follows: "In 1623 the inhabitants of the county of the city endeavoured in parliament to have a knight for their in-shire, which the city opposed, and occasioned a proper clause to be inserted in the city charter."—p. 121.

grant, &c. to the mayor and burgesses of the city aforesaid, and their successors, the said whole city of Gloucester, with all and singular its privileges, rights and appurtenances, having been hitherto used, &c. in as ample a manner, &c. as heretofore granted to the mayor and burgesses of the city aforesaid, and their predecessors, by whatever name or names of incorporation, or any former charters or letters patents of any of our ancestors and progenitors, and as the said mayor and burgesses, and their predecessors, by virtue or pretext of any charter or letters patents, have heretofore lawfully holden and possessed it.

Ch. 24 Car. 2.

"And we do further, &c. grant, approve, ratify and confirm, to the aforesaid mayor and burgesses of the city aforesaid, and their successors, all and singular such like manors, messuages, lands and tenements, court leets, assize of frankpledge, sheriffs courts, and all other courts whatsoever, markets, fairs, customs, liberties, franchises, freedoms, fines and amerciaments, exemptions, jurisdictions and inheritances whatsoever, as the said mayor and burgesses now lawfully enjoy and use, or that they, or either of them, or their predecessors, by any names of incorporation, or by virtue and pretext of any charters or letters patents, by any of our predecessors and progenitors, late kings and queens of England, made and granted, were wont to have, use and enjoy before the said surrender was made, or by pretext of any law, prescription or custom, or any other lawful way,

Ch. 24 Car. 2.

right or title, had and accustomed, although they, or some of them, have been ill used or abused, or any way lost or forfeited, yet to be kept and enjoyed by the aforesaid mayor and burgesses of the city aforesaid, and their successors, for ever, only paying to us, our heirs and successors, such fee-farm and sums of pence as have been hitherto due, and used to be paid: Wherefore we will and do, for us, our heirs and successors, by these presents, by strict injunction, command, that the aforesaid mayor and burgesses, and their successors, may for ever have, hold, use, exercise and enjoy, all and singular the aforesaid courts, and all other authorities, jurisdictions, franchises and immunities, together with all manors, lands, tenements and inheritances aforesaid, according to the tenor and effect of these our letters patent, &c. without any lett or impediment from us, our heirs or successors," &c.

Trial of county causes, &c. in the county of the city.

"Nevertheless we will, that the justices of assize of nisi prius and general gaol delivery, in the county of Gloucester, as also the justices of the peace of the said county, being assigned, or to be assigned, to keep their sessions, and also the sheriffs of the county of Gloucester, they, and either of them, may freely enter the said city to keep their sessions, concerning any matter or business happening or issuing without the county of the city, and within the county of Gloucester, as they were wont before these times, and before the letters patent of the said late king Rich. III,

made in the 1st year of his reign, this present grant in anywise notwithstanding." Ch. 24 Car. 2.

This charter likewise proceeds, in similar terms, to enable justices of the peace for the county of Gloucester to take recognizances and informations, and to act generally in that capacity in cases arising in the county of Gloucester, within the county of the city: likewise commissioners of sewers and charitable uses to execute their respective commissions in the city of Gloucester, in any matters arising within the county of Gloucester; and re-annexes the hundreds of Dudstone and King's Barton to the county of Gloucester, as follows:

Dudstone and King's Barton; vide ante, Ch. 1 R. 3, et stat. 13 and 14 Car. 2.

"Always provided, that these letters patent, or any thing in them contained, shall not extend, or be expounded or interpreted, to grant the hundreds of Dudstone and King's Barton, near the city of Gloucester aforesaid, or the villages, parishes, hamlets, or any other places within the said hundreds, to be a parcel of the county of the city aforesaid, as in former times have been; or to give, grant and confirm to the aforesaid mayor and burgesses of that city, and their successors, any liberties, privileges, franchises, immunities, jurisdictions, powers, profits or advantages whatsoever, to be had, taken and enjoyed within the said hundreds, or either of them; and all villages, places and hamlets whatsoever within the said hundreds and hamlets, and every part and parcel of them, or either of them, shall henceforth for ever remain parcels of our said

Ch. 24 Car. 2.

county of Gloucester, to all intents and purposes (*d*); and that all things, jurisdictions, liberties, privileges, powers and authorities, by any of our progenitors and predecessors, kings or queens of England, heretofore granted to the vill or city of Gloucester aforesaid, or corporation of the same, by any name or names, within the said hundreds, to be had, taken and enjoyed, to be void and of none effect, as for and concerning the said hundreds, and either of them, and all inhabitants of the same, according to the form of the statute in that case made and provided, any thing in these presents contained to the contrary in anywise notwithstanding."

Reservation in favour of the church.

This charter likewise contains a reservation to the dean and chapter of the cathedral of all their liberties and privileges.

Municipal government.

The municipal government of Gloucester is vested in a mayor, twelve aldermen, a recorder, two sheriffs, a town clerk, and a common council, not exceeding twenty-six, nor less than sixteen.

Lord lieutenant.

The lord lieutenant of the county of Gloucester is also appointed for the city and county of the same.

Justices of the peace.

The mayor, the bishop of the diocese, the recorder, the dean, the aldermen, and two such prebends as the king may appoint, are justices of the peace for the county of the city.

(*d*) The freeholders of these hundreds vote at the election of knights for Gloucestershire.

The sheriffs are the returning officers. Re turning officers.

The right of election is in the freemen. Right of election.

Gloucester has returned members to parliament since 26 Ed. I. 3 Wil. Not. Parl. 24.

The ancient mode of election at Gloucester appears from the following return:—

"Per istam indenturam Thomas Hilley, et Willielmus Newman, ballivi villæ Gloucester, liberaverunt Johanni Trye, vic. com. Glouc. nomina burgensium villæ Glouc. electorum ad parliamentum domini regis apud Westm. tenend. sexto die Novembris, prox. futur. prout in mandato, dicti vic. cujus, dat. est apud Glouc. 26 die Octob. anno regni regis Henrici Sexti, post Conquestum vicesimo octavo eisdem ballivis directo, virtute cujusdam brevis regis de parliamento ad diem et locum præd. tenend. eidem vic. directi, cujus brevis dat. est apud Stowe, 23 die Septemb. anno domini regis prædicti supradicto. Return, 28 Hen. 6.; 3 Prynne, 269.

"Burgenses electi Willielmus Notingham, Henricus Dod, electores burgensium prædictorum Thomas Hilley," and eleven others by name; but with the addition:—In cujus rei testimonium tam prædicti ballivi, quam prædictus vic. sigilla officiorum suorum alternatim apposuerunt. Dat. apud Glouc. 29 die Octob. anno supradicto."

Freeholds situate within the county of the city of Gloucester do not confer votes for the county of Gloucester (e).

(e) In the contest between Sir William Guise and Mr. Dutton, in the year 1811, the claim of persons possessing

Right of voting.

There is no determination of the House of Commons on the right of voting for Gloucester; but the invariable usage has been, that the freemen only should vote.

Prynne Brev. Parl. 176.

Mr. Prynne gives the following indenture of return for the county and borough, of the date of 25th Hen. VI, from which it appears, that the same persons signed the return both of the knights for the county and burgesses for the borough.

Return, 25th Hen. 6.

"Nomina militum pro parliamento de quo in brevi domini regis huic indenturæ consut. fit mentio elect. Thomas Pauncefoot, Johes Cassy. Nomina burgens. pro burgo Glouc. de parliamento de quo in prædicto brevi huic indenturæ consut.

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freeholds within the county of the city was set up; but owing to the termination of the contest received no decision. Upon this occasion it was urged, that previously to the charter of Richard III. the city of Gloucester was unquestionably part of the county, and consequently the freeholders within that district were entitled to vote, in respect of their freeholds, as part of the county. That the separation of the city from the county being by *charter*, and not by act of parliament, could not have the effect of disfranchising freeholders, who, previously to that charter, were entitled to vote for the county; particularly as by the charter no right of voting was given to the freeholders within the city, and consequently such freeholders could not be deemed to have done any act by way of acceptance of that charter. And that if the crown, by *charter*, had the power of thus insulating any district, and thereby depriving the freeholders within that district of exercising their franchise in a county, the most unconstitutional acts might be effected.

fit mencio elect. Thomas Derehurst, Walter Chaunterell.

Return, 25 Hen. 6.

"Nomina illorum qui electioni prædictæ interfuerunt, viz. Willus Tracy, armig. and about thirty more are named, which conclude the indenture without any distinction between the electors of the knights of the shire, and burgesses of the borough of Gloucester.

"The other indentures for the knights and burgesses, before and after, are usually distinct."

Decisions at law.

Although the effect of the charter, making Gloucester a county of itself, has never been brought under the consideration of parliament, that clause which reserves to the sheriff, the justices of assize and of the peace for Gloucestershire, the honour of holding their respective courts for the dispatch of county business, in the county of the city, has given rise to two decisions in the courts of law, and as they are material in showing the interpretation which the judges put on the charter of R. III, and have been repeatedly referred to in argument by counsel in the annexed report, it has been thought convenient to insert them.

Sherry v. Richardson.

The first of these cases is commonly referred to by the title of Sherry *v.* Richardson, under which it is reported in Popham, p. 16; but in Anderson's Reports, p. 291, and also in those of Sir Francis Moore, the point is reported to have arisen upon several queries on the effect of the

Sherry v. Richardson.

charter in question, moved by Sir William Periam, then lord chief baron of the exchequer, after Hilary term, 35th Eliz., previous to his going the circuit, and then discussed at Serjeant's Inn. Whether any thing that took place in the case of Sherry and Richardson gave rise to this inquiry and resolution of the judges does not appear, but in all probability it was a proceeding quite independant of that case. The question for the consideration of the court in Sherry *v.* Richardson was, the validity of an award; and it does not appear, from the report of Popham, that this question arose in Gloucestershire, neither is any reference made to this case in the resolution of the judges upon the effect of the Gloucester charter. Neither Anderson nor Moore take any notice of the case of Sherry *v.* Richardson; and the former reporter refers to this decision under the title of the case of the city of Gloucester. As this case is reported by Moore very shortly, and in French by Anderson, it is inserted as given by Popham.

Popham, p. 16.

"King Richard III, by his letters patents, granted to the burgesses of Glocester, and to their successors, that the town of Glocester, &c. shall be a county of itself, several and distinct from the county of Glocester, for ever, and no part of that county, and shall be called the County of the town of Glocester; neverthelesse saving and reserving to himself and his heirs, that the

justices of assize in the county of Glocester, the justices of gaol delivery and of the peace, in holding of their sessions, and also the sheriff of the county, in holding of his county courts, and every of them, may freely enter into the said town, and keep the said sessions and county courts, of and for any thing and matters arising out of the said county of the town aforesaid, and within the said county of Glocester, as before time they had accustomed to hold them there, the said grant or any other thing notwithstanding. And grants, further, that they shall have a maior, two sheriffs, and one recorder, within the same county of the town of Glocester, and that the ministers of the sheriff of the county shall not afterwards enter to do or execute any thing there to which to their office of sheriff appertaineth, or any waies to intermeddle with it, except only for the sheriff of the county of Glocester, to hold their county courts as is aforesaid. And that the maior and aldermen of the said town for the time being, and their successors, having power and authority, to inquire, hear and determine all things, which justices of P. or justices assigned to hear and determine trespasses and misdemeanors within the county of Glocester before this time, had made or exercised; and that the justices of peace of him, his heirs or successors, within the said county of Glocester, should not intermeddle with the things or causes which belong to the justices of

Sherry v. Richardson.

peace within the said town," &c. And upon this charter divers things were moved by Sir William Periam, knt., now chief baron of the exchequer, before his going upon the circuit:

"1. Whether, by the saving of the charter, they have sufficient power reserved to them to sit within the town, being now exempted from the said town of Glocester, to inquire there of the felonies done in the said county of Glocester; and so for the assizes and nisi prius taken there of things made in the county of Glocester. Then, if the sheriffs may execute their warrants made there at the time of the assizes or gaol delivery, notwithstanding the exemption given to them by the patent.

"And it was agreed by all the justices, that the saving in the patent is sufficient for the justices of assize and gaol delivery to sit there for the things which happen within the county of Glocester; for as the king may by his letters patents make a county, and exempt this from any other county, so may he, in the making of it, save and except to him and his successors, such part of the jurisdiction or privilege which the other county from which it is exempted had in it before; as in divers places of the realm, the gaol of a town which is a county of itself, or which is a place privileged from the county, is the gaol of the county, and the place where the assizes or gaol delivery is holden is within the county of the

town, and yet serves also for the county at large; as in the sessions hall at Newgate, which serves as well for the county of Middlesex as for London, and yet it stands in London, but by usage it hath alwaies been so, and nothing can be well prescribed unto by usage which cannot have a lawful beginning by award or grant, and this, by the division of London from Middlesex, at the beginning might be so; and so the gaol of Bury, &c. And although that the words are, 'saving to him and his heirs,' yet by the word (heirs) it shall be taken for a perpetual saving, which shall go to his successors, which is the queen, and the rather because it is a saving for justice to be done to the subjects, which shall be taken as largely as it can be: and albeit the expresse saving for the sheriff is but for to hold his turn, yet inasmuch as the authority of the justices of assize and gaol delivery, in holding their sessions as before was accustomed, is saved, it is included in it, that all which appertain to the execution of this service is also saved, or otherwise the saving shall be to little purpose; and therefore that the sheriff, or other minister made by the authority of these courts, is well made there, and warranted by the charter. And we ought the rather to make this exposition of the charter, because it hath been alwaies, after the charter, so put in execution by all the justices of assize; but it seems, that by this commission for the county, a thing which happens in the town

Sherry v. Richardson.

Sherry v. Richardson.

cannot be determined, albeit it is felony committed in the hall during the sessions, but by a commission for the towne it may." This is the whole of the report as given by Popham, to which I shall add the following passage from that of Anderson: That it was thought by the justices, and by them all agreed, that they could hold their sessions in the said town of Glocester, for the matters of the county of Glocester, because it appeared to have been the king's intention for those purposes to have the town of Glocester parcel of the said county of Glocester, and for other purposes, before especially shewn, to be a county of itself.

Anderson, Rept. p. 292.

The King v. *Gough.*

2 Doug. Rep. 791.

Gough was tried, in 1777, at the booth hall in the county of the city of Gloucester, by a county jury, on a charge of having committed perjury on the trial of a county cause, which had previously been tried in the same place.

The jury found a special verdict, which set out, that part of the charter of Richard III, which made Gloucester a county of itself, with liberty to the justices of assize, &c. to enter to hold their courts, and the subsequent charters granted to Gloucester: that separate commissions of nisi prius and gaol delivery issued for the county at large, and the county of the city, both of which had been executed at a "*place* in the said city,

called the booth hall:" that the matters arising within the county and the county of the city were respectively tried by juries of that county in which the offence or cause originated: that the sessions of the peace for the county were held in the booth hall: "that the issue in the indictment mentioned had been tried by a jury of the county, in the booth hall:" and "that the defendant, being then and there sworn, did upon his oath, in the said place called the booth hall, commit wilful and corrupt perjury in the several matters charged in the indictment."

"The objection to this indictment was, that the offence had been committed within the county of the city, and that the juries of the county at large had no jurisdiction to find, or try, an indictment for any crime not committed in the county at large."

The case was argued by *Bearcroft* for the prosecution, and *Baldwin* for the defendant.

The court directed *Baldwin* to begin, who argued to the following effect: It is clear that offenders can only be tried by juries of that county in which the offence is committed, and that the charter of R. III. only authorizes the justices for the county at large to inquire of things which had arisen out of the county of the town, and that the true meaning of it was, to give the use of the *booth hall* to the judges and juries for the county at large, and to authorize their pro-

R. v. Gough.

ceedings there, relative to matters within their jurisdiction. That at the Old Bailey, which is in the city of London, juries for the county of Middlesex sit to try offences committed in that county; but when perjury has been committed, on such occasions the offender has been tried, not by a Middlesex, but by a London jury. That the decision in Sherry *v.* Richardson was merely that the justices of assize, &c. might sit in the city for things which happen within the county; and in a note at the end of that case, it is said, that by the commission for the county, a thing which happens in the town cannot be determined, albeit it be felony committed in the hall during the sessions, and that no inconvenience would arise if the court should hold this indictment bad, there being separate grand juries for both counties.

Bearcroft, for the prosecution, contended, that the perjury having been committed on the trial of a county cause, it must of necessity be understood, that, at the time, the spot where the offence took place was part of the county at large; that it was not unusual for the same spot to be, for different purposes, considered as in different jurisdictions. That the charter of R. III, by giving authority to the justices for the county at large to try county causes within the limits of the town, made the place where they sat part of the county at large for that purpose; and if that were not the case, all the proceedings in the trial which

gave rise to the present indictment would be void.

That the judges, in the reign of Elizabeth, had resolved that the king might, in making a separate county, except part of the jurisdiction within it, which the county from which it was taken had in it before; and that, by the saving in the charter of R. III, all that is connected with the execution of commissions for the county is necessarily saved. That it is true a felony committed in the hall during the assizes for the county must be tried in the city, because such offence is entirely unconnected with the execution of the commission for the county. That the judges had held, that Gloucester, for the purposes mentioned in the exception, was continued part of the county at large. That no inference could be drawn from the case of London, as the practice there may be warranted by its charters, which were confirmed by Parliament; and that perhaps the present indictment might have been well laid in either county, as in point of law the booth hall was at the time in the county at large, and in point of fact and local situation in the county of the city.

"Lord Mansfield.—It seems to me, as at present advised, to be the better opinion that the crime might be laid in either county; but the question now before us is, whether it could be laid in the county at large? The doubt before the judges, in the case in Popham, was, as Mr.

R. v. Gough.

Baldwin states it, whether the judges could sit in the city to try matters arising in the county at large? But it is material to see how it was solved. In the time of Ric. III. the town was part of the county at large; by his charter it was made a distinct county, but with an exception that the judges for the county at large might still try causes there. The king cannot, by his charter, give judges a power to try in one county offences committed in another. That was admitted in the case before the judges, as reported by Anderson; but it was answered, that he had continued the city as part of the county at large. If this is so, the cause in which the perjury was committed was tried in the county at large, and the witness was examined and the crime committed in the county at large. This distinguishes the present case from that of the Old Bailey, which struck me strongly at first. The city of London has many charters and customs, confirmed by act of parliament; and the custom of trying offences, committed in Middlesex, at the Old Bailey, has probably been confirmed by act of parliament, for otherwise it would be void."

"WILLES and ASHURST, *Justices*, (*f*) concurred.

"BULLER, *Justice*.—I am of the same opinion. There is no way of supporting the judicial pro-

(*f*) The report given in Douglas has been abridged as much as is consistent with clearness.

ceedings at Gloucester, from the time of Ric. III, but by considering them as having been had in the county at large; because I take the law to be clearly as my lord and my brothers have stated it. We have no authority to compel a jury to come, or to administer an oath, out of the county where the matter arises; therefore the meaning of the charter must have been, to leave the place as part of the county at large. I am very strongly inclined to think the indictment might be laid in either; but if there is a difference, I think this the most proper way."

The defendant was afterwards brought up for judgment; but a new trial was awarded, the evidence stated in the report not being satisfactory to the court.

COUNTY OF THE TOWN OF HAVERFORDWEST.

Fenton's Historical Tour through Pembrokeshire, p. 206.

HAVERFORDWEST formed part of what was formerly the county palatine of Pembroke, and was early endowed with ample privileges. The barony or lordship of Haverfordwest has remained in the hands of the crown from the time of Henry VII, and was previously held by distinguished persons. It was made a distinct county by act of parliament, in the 34 & 35 of Hen. VIII; but it will not be necessary to inquire at much length into the early history of this place, as it first returned a member to parliament in virtue of the same statute.

c. 26, s. 124.

Ch. R. 2. and Ed. 4.

Richard II. and Edward IV. both granted charters to this place, and by the last-mentioned king it was first made a county of itself. The division of Wales into twelve counties was completed, and many of the lordships of the marches annexed to several of the adjoining English counties, by the 27 Hen. VIII, c. 26; and by sec. 17. of that statute, among other "lordships, towns, parishes, counties, hundreds and cantreds," therein enumerated, that of Haverfordwest was thenceforth "united, annexed and joined to and with the county of Pembroke." The same statute empowers each shire, and every borough being a shire

sec. 29.

town, to send one representative to parliament; except that of Merioneth. This statute is alluded to in the following sect. of 34 & 35 Hen. VIII.

Stat. 27 Hen. 8.

"And furthermore, the king's majesty is contented and pleased, notwithstanding the stat. made in the 27th year of his most gracious reign, that there should be but twelve shires in Wales; that the town of Haverfordwest shall be a county of itself, as it hath been before this time used, at the will and pleasure of the king's said majesty; and that it shall be separated from the county of Pembroke at the king's said pleasure. And that the king's high justice of the said county of Pembroke shall be high justice of the said county and town of Haverfordwest; and shall have like power and authority, to and for the administration of justice within the said county and town of Haverfordwest, as is limited and appointed to the said justice to and for the administration of justice in the said county of Pembroke. And that the mayor, sheriff, bailiffs and burgesses of the said county and town of Haverfordwest, from time to time, shall be as well attendant, and obey all precepts and commandments of the president and council of our said sovereign lord the king, in his marches of Wales, as also shall be attendant to all precepts and process awarded or directed by the said high justice unto the sheriff of the said county and town of Haverfordwest, and to make return thereof. And the said sheriff of

34 & 35 Hen. 8, c. 26, s. 124.

34 & 35 Hen. 8, c. 26, s. 124.

the said county and town shall serve all precepts and process directed from the said high justice, in like manner and form as the sheriff of the said county of Pembroke is bound to do, and according to the effect and purport of the king's ordinances in that behalf had, made and provided. And that it shall be lawful unto the said mayor, sheriffs, bailiffs and burgesses of the said county and town of Haverfordwest aforesaid, to use and exercise all lawful liberties and grants, by the king's majesty, or his noble progenitors, to them granted and confirmed, at the king's majesty's will and pleasure, according to the laws of the realm of England, and not otherwise. And that the judicial seal of the shires of Pembroke, Caermarthen and Cardigan, being in the custody and keeping of the king's high justice there for the time being, shall be used in the said county and town of Haverfordwest, as the original and judicial seal of the said town and county. And that the said justice of the said shires of Pembroke, Caermarthen and Cardigan, shall have like power and authority, by virtue of the king's letters patents to him made, as well to do all and every thing and things concerning common justice to be ministered within the said town and county of Haverfordwest, as he hath in his said letters patents within any of the said shires of Pembroke, Caermarthen and Cardigan."

s. 125. Then follows this singular clause: "Provided

always, that this article touching and concerning the town of Haverfordwest, and all things therein contained, shall stand and endure but only at the king's majesty's will and pleasure, and none otherwise." 34 & 35 Hen. 8, c. 26, s. 125.

Up to this period the town of Haverfordwest had not enjoyed any parliamentary privileges; but by a former section of this statute it is enacted, "that the town of Haverfordwest shall, after the end of this present parliament, for ever find one burgess for the said town, at every parliament after that time to be holden; and the charges of the same burgess to be always borne by the mayor, burgesses and inhabitants of the said town, and none other." s. 111.

James I, in the 7th year of his reign, granted a charter to this town, by which the inhabitants were incorporated by the style of the "Mayor, sheriffs, bailiffs and burgesses of the county of the town of Haverford, otherwise Haverfordwest, without our county of Pembroke;" by which charter it was "ordained, that the town of Haverford should be and remain hereafter for ever a free town and county of itself, distinct and separate in our county of Pembroke, and from our other counties whatsoever within our lordship of Wales. And that the several sites of the Priory, and the Friars, and the hill called the Prior's Hill, and Prior's Marshes, and the Friar's Gardens, situate within the limits of the town of Haverfordwest aforesaid, be, and for the future shall be Ch. 7 Jac. 1. Fenton, 206. Limits of Haverfordwest extended.

Ch. 7 Jac. 1.

esteemed as part and parcel of the said county of the town of Haverfordwest, within the limits, liberties and precincts of the same;" and that "the house called the Cook-house, used as a county jail, though in the said town and county, to be deemed exempt and separate from it."

Fenton, 207, in notis (b).

The same charter appoints twenty-four common council-men, fifteen to be aldermen, and the rest brethren; and directs that the mayor should be elected out of three common council-men, and that the sheriffs also should be elected out of three common council-men, or other honest burgesses. This charter also invests the mayor for the time being with the offices of coroner, escheator, and clerk of the market.

Municipal government.

The municipal government of this town and county is in the hands of a mayor, sheriff, two bailiffs, and twenty-four common council-men.

Returning officer, &c.

The returning officer is the sheriff.

Right of election.

"The right of election was agreed to be in the freeholders, burgesses and inhabitants paying scot and lot, and not receiving alms."

Journ. 4 July, 1715, v. 18, p. 199.

Lord lieutenant.

There is a separate lord lieutenant (a) and custos rotulorum for the town and county of Haverfordwest, who discharges all the ordinary duties of those offices.

Justices of the peace, &c.

The civil jurisdiction of the county of the town is vested in the corporate justices and officers, to

(a) This is the only instance, with the exception of London, in which there is a distinct commission of lieutenancy for a corporate county.

the exclusion of those of the county of Pembroke, and the great sessions for the town and county are held, and the juries summoned, and all other acts done distinct and separate from that county.

Civil jurisdiction.

We have seen that the 34 & 35 H. VIII, by which Haverfordwest was empowered to send a representative to parliament, does not provide who should elect; although, from the wording of the 11th section, it seems probable that it was intended to vest the right of voting in the burgesses, as they alone are required to contribute to the wages. We have also seen, that since the year 1715, the freeholders have elected, as well as the burgesses and inhabitants; and from the terms of the resolution of the House on that occasion, it appears that the right of the freeholders to elect was "agreed to," and not disputed. When the freeholders first began to vote, I have not been able to ascertain; but from the discussion which the right of voting at Haverfordwest underwent in 1662 (as reported by Mr. Serjeant Charlton, on the trial of the petition between Sir William Moreton and Mr. Isaac Lloyd), it seems doubtful whether any such right was exercised at that period.

Decisions on the right of election.

"April 4, 1662. Serjeant Charlton reported from the said committee, touching the election for this town and county, between Sir William Moreton and Mr. Isaac Lloyd, that the question was, whether the mayor and burgesses of the town only, or the mayor, burgesses, and inhabit-

Journals, 4 April 1662, v. 8, 396.

Petition, 1662.

ants that paid scot and lot, had voices; and that, upon perusal of the statute of 31 (b) Hen. VIII, the committee was of opinion, that the mayor, burgesses, and inhabitants that paid scot and lot, had voices; and that, although Mr. Lloyd had the greater number of voices, yet divers of them did not pay scot and lot; and those being set aside, Sir William Moreton had the greater number, and so was duly elected. But upon information that divers of the inhabitants, which gave voices for Sir William Moreton, did not pay scot and lot:

"Resolved, upon the question, that the matter touching the election for the said town of Haverfordwest, be recommitted to the committee of elections, to examine whether any of the burgesses and inhabitants of Haverfordwest, did not pay scot and lot, which did give voices for Sir William Moreton, and how many; and to make their further report touching the election for the said town;" and on the 23d of May 1663, the further report of the committee was made as

Journals, 23 May 1663, v. 8, 491.

ɔt Charlton reports from the committee
s and elections, touching the election
and county of Haverfordwest, between
Moreton and Mr. Isaac Lloyd, that
the committee were of opinion, that the burgesses

(b) As there is no statute of this date which relates to Hatetfordwest, I presume this is a misprint in the Journals, and that it was intended to refer to the 34 & 35 Hen. 8.

and inhabitants of Haverfordwest, and the inhabitants which paid scot and lot, had voices in the election; and that the committee, upon the examination of the whole matter, were of opinion that Mr. Lloyd was not duly elected.

Petition, 1662-3.

"And that the opinion of the committee was, that Sir William Moreton was duly elected."

"A petition was tendered, subscribed by several persons, touching the election for Haverfordwest.

"The question being put, that the paper, under the title of a petition, be read;

"It was resolved in the affirmative.

"And the paper being read;

"And the question being put, to agree with the committee, that Sir William Moreton was duly elected;

"It passed in the negative.

"Ordered, That the Speaker do issue out his warrant to the clerk of the crown, to make out a writ for election of a member for the town and county of Haverfordwest."

In 1678, 79, and 80, petitions were also presented against the returns for this town and county; but it does not appear that they gave rise to any discussion or resolution on the right of voting.

On the 15th of May 1715, a petition was presented by Mr. John Barlow, complaining,

Petition, 1715.

"That Sir George Barlow, bart., who was the other candidate, notwithstanding the petitioner

Petition, 1715.

was duly elected by a majority of legal electors, did procure himself to be returned by the illegal practice of James Wheeler, esq. the present mayor of the said town and county, and brother-in-law to Joseph Prust, gent. sheriff; who did, in favour of Sir George Barlow, bring several persons, foreigners to the said corporation, whom he pretended had a right to vote at the said election, though the petitioner is well informed they were made freemen against the rules of the said corporation; the said sheriff declaring, notwithstanding all objections made by the petitioner, he would allow of whomsoever the mayor should bring up, and he accordingly did admit the persons, so illegally made, to vote, and returned the said Sir George Barlow, to the prejudice of the petitioner," &c.

This petition gave rise to the following report, made by Mr. Hampden on the 4th of July; and the resolution founded thereon still governs the right of voting at Haverfordwest: "That the right of election was agreed to be in the freeholders, burgesses, and inhabitants paying scot and lot, and not receiving alms."

Resolution of 1715.

Journals, v. 8, p. 199.

That the right of the freeholders to vote was not only agreed to, but never disputed, will appear from the state of the poll and list of objections, as follows: for Sir George Barlow, 222; for the petitioner, 181. Objections made by Mr. Barlow against 79 votes for Sir George; viz. 34 as illegal burgesses; 20 alms-men; 15 inhabit-

ants, not paying scot and lot; 8 neither freeholders, burgesses, nor inhabitants; and 2 minors. Petition, 1715.

Observations.

This is the only instance in which a corporate county has been so distinctly made by act of parliament. It, however, will be observed that the 125th section of 34 & 35 Hen. VIII. seems to have been inserted as a sort of protest in behalf of the prerogative of the crown, as it gives the king power, at any subsequent time, to dispense with the operation of the preceding clause: "Provided always, that this article touching and concerning the town of Haverfordwest, and all things therein contained, shall stand and endure but only at the king's majesty's will and pleasure, and none otherwise." That this prerogative was not considered as lost to the crown at this time we have ample proof; for the subsequent charter of Jac. I. not only added certain lands, &c. to the county of the town, but also excluded the gaol therefrom, thereby affording another instance of an exceptive charter. The history of this county also illustrates the principle, that a right in the freeholders to vote for the town and county, and not for the county of which such district had formerly formed a part, was considered as incident to the act of separation. Here the separation took place six years after the freeholders of Haverfordwest, as freeholders of the county of Pembroke, were entitled to vote for the knight of the shire for that county. By the same statute that Haverfordwest was made

Vide ante, Ch. 7 Jac. 1, p. 215.

Observations.

a distinct county, it was first entitled to send a representative to parliament; and by that statute the burthen of returning and paying the wages of that representative was thrown on the corporate body in express terms; and yet we find the freeholders admitted and acknowledged as voters for this place, without the intervention of any charter, and almost in opposition to the import of the 111th sect. of 34 & 35 Hen. VIII.

COUNTY OF THE TOWN OF KINGSTON-UPON-HULL.

KINGSTON-UPON-HULL, under the name of Wyke, Wyke-super-Hull, and Hull, became early (*a*) a considerable port, and was incorporated by Edward I, who increased the size of the town, from whence it was named Kingstown, or Kingston-upon-Hull. 2 Camb. Brit. p. 739.

In 1296 the men of Kyngeston-upon-Hull petitioned Ed. I. to grant them certain privileges,

(*a*) Although Cambden treats Hull as a town of no great antiquity [1], still it must have been a considerable port long before the time of Ed. I, as Maddox [2], in his history of the Exchequer, mentions, that in 1198 forty-five sacks of wool were seized at Hull, having been shipped without a licence. In 1205 Hull ranked as one of the principal ports of the kingdom, to which, as such, an order issued, in 1226, directed to "*Saliero de Sutton ballivo portûs de Hulmo* [3]." And in 1266, the archbishop of York obtained a grant from Hen. III, "*Pro archiepo Ebor' de portu suo de Hull et de prisis vinorum suorum ibm.* [4]; also, in 1294, the usual amount of the customs of this port is stated by Maddox to be, 1,086 *l.* 10 *s.* 8 *d.* [5]

[1] V. 2, p. 739. [2] 18. 4. [3] Claus. 11 Hen. 3, m. 26, d. Turv. Lond. Rym. Fæd. last edit. v. 1, p. 182. [4] 51 Hen. 3. Rot. Parl. m. 23. [5] Mad. Exch. 23, 1.

For these references, and several of the charters subsequently noticed, I am indebted to Mr. Broadley.

Ch. 27 Ed. 1.

for which they offered to give one hundred marks; in consequence of which they obtained a charter, which was subsequently confirmed by another granted by the same king, in the 30th year of his reign, in which he confirmed to the burgesses their gaol, &c. as granted to them by the preceding charter, and granted that he and his heirs should send their justices to the said borough, as often as it should be necessary, to deliver the gaol of all malefactors, &c. according to the law and custom of the realm. This charter was also confirmed by one granted 5th Ed. II, who, in the 15th year of his reign, enabled the burgesses and community of the said town, to fortify it with a wall and ditch, and to hold it to them, their heirs and successors, without let or hinderance. In the same year the burgesses were authorized to raise a toll to enable them to erect their walls and fortifications of stone and lime. A charter of a similar nature was granted by Ed. III, in 1327, who also confirmed all former privileges in 1331.

Rot. Chart. Turv. Lond. N° 27.

Ch. 30 Ed. 1.

Ch. 5 and 15 Ed. 2.

Rot. Pat. p. 1, m. 21.

Ch. 1 and 4 Ed. 3.

By a third charter granted in 1332, the same king confirmed the preceding charters, and granted the borough, and its appurtenances, to the burgesses, at a fee-farm rent; also enabled them yearly to elect from among themselves one mayor, and four bailiffs, to govern the said borough, and hold pleas touching the same: exempted the burgesses from impleading or being impleaded out of the borough: gave the mayor and bailiffs juris-

Ch. 5 Ed. 3. Rot. Chart. 62.

diction in criminal matters, similar to those previously exercised by the "*custodes*" of the said borough, and enabled them to take assizes, and hold pleas of debts, &c.: granted all the waste lands to the burgesses, also the return of writs, and excluded all sheriffs, &c. from executing process within the said borough, except the mayor and bailiffs should make default: exempted the burgesses from serving on juries out of the town, and excluded all others from performing that office therein; and protected the goods of foreigners within the borough, and exempted the burgesses from anchorage throughout the kingdom. Ch. 5 Ed. 3.

In 1335, Ed. III. again confirmed the former charters, and made further provision respecting the fee-farm rent, the corporate seals, and the recognizance of debts, &c. Ch. 8 Ed. 3. Rot. Char. N° 26.

Richard II, in 1382, confirmed the existing charters, and granted to the mayor, bailiffs and burgesses of Kingston-upon-Hull, the town lately called Sayer's Creek, but now Hull, from Scalcote to the middle of the Humber; also, cognizance of all pleas, &c., the assize of bread, &c., and the custody and assay of weights and measures, to the exclusion of the king's clerk of the market. Ch. 5 R. 2. Rot. Char. N° 16.

Hen. IV. granted a charter of confirmation in the 1st year of his reign, and subsequently others of the same nature; and so did Hen. V. in the 2d year of his reign. Ch. Hen. 4. Ch. Hen. 5.

Henry VI. likewise granted charters of confirmation in 1431 and 1433. And by a charter, Ch. 9 and 11 Hen. 6.

Ch. 10 May, 18 Hen. 6.

Tur. Lond. N° 40, n. 29.

dated 10th May 1450, on account of the affection which he bore to the town of Kingston-upon-Hull, and the mayor and commonalty of the same, and in consideration of the good deeds and services performed by the burgesses of the said town to him and his predecessors, and for the greater security and safe government of the said town and burgesses, granted to them, their heirs and successors, the following privileges, &c.: That the said town should be incorporated of a mayor and burgesses, and that the said mayor and burgesses, and their successors, should be one corporation for ever; and by the name of the mayor and burgesses, &c. be able both to sue, and be sued, in all courts, &c. with power to the same to hold lands, &c. within the said town and liberties. This charter also made Kingston a county of itself, in the following terms:

"Et (b) insuper ex abundantiori gratia nostra concessimus pro nobis et heredibus nostris prædictis burgensibus et eorum hæredibus et successori-

villæ imperpetuum quod
super Hull et precinct.
quæ infra corpus com.
tinentur ab eodem com.
is prox. futur. separatæ
enitus exemptæ existunt
ram quam per aquam et

(b) Taken from a MS. copy of this charter in the Inner Temple library.

quod eadem villa de Kyngeston super Hull et precinctus ejusdem sint ab eodem crastino com. per se et non parcella com. Eboraci et quod iidem burgenses villæ de Kyngeston super Hull et precinctus ejusdem com. villæ de Kyngeston super Hull imperpetuum nuncupantur et quod iidem burgenses et eorum heredes et successores burgenses ejusdem villæ habeant imperpetuum infra villam predictam et precinctum ejusdem per fines et bundas prout limitat. existunt libertates privilegia et franchesias subscripta:" viz. Ch. 18 Hen. 6.

That the mayor shall be elected in the same manner as heretofore. The mayor for the time being to be escheator. Mayor escheator.

That the burgesses should annually elect one of themselves to be sheriff of the said town and precinct, whose name should be returned to the Chancery under the common seal of the said town, and who, together with the escheator, should execute all the duties of their respective offices within the said town, &c. to the exclusion of any other escheator or sheriff. Sheriff.

Justices of the peace for Yorkshire to be thenceforth excluded from acting in any matter arising within the said town, liberties or precincts. Justices of Yorkshire excluded.

That the burgesses may elect out of themselves thirteen aldermen, of whom one should always be mayor of the said town; and who should also be justices of the peace for the said town, &c. with the same powers as the justices of the said riding of Yorkshire, or elsewhere. Aldermen. Justices for Kingston.

Ch. 18 Hen. 6

Fines, &c.

The burgesses, their heirs and successors, to have all fines, &c. in aid of their fee-farm rent.

Clerk of the market.

The seneschal, and clerks of the household and market, excluded from exercising their respective offices within the said town, liberties and precincts, both in the presence and absence of the king.

Coroner.

The coroner of the said town, &c. to exercise his office therein during the king's presence, as well as in his absence.

Then follows the reservation of former privileges, in the following terms:

Reservation of former privileges.

"Quare volumus et fermiter præcipimus pro nobis et hæredibus nostris prædictis quod præfati burgenses villæ nostræ prædictæ ac eorum hæredes et successores omnes et singulas hujusmodi cognitiones franchesias libertates immunitates ac omnia alia premissa prout superius specialiter expressantur habeant teneant et exerceant, ac eis et eorum singulis plene libere integre pacifice et quiete imperpetuum gaudeant et utantur absque perturbatione molestatione seu impedimento nostri vel hæredum nostrorum aut aliquorum officiariorum seu ministrorum nostrorum vel hæredum nostrorum sicut prædictum est modo et forma, superius prænotatis" hiis testibus, &c.

Ch. 2d July, 18 Hen. 6. 3 Rot. Parl. m. 16.

By another charter, dated 2d July, in the same year, the mayor was permitted to have a sword borne before him, and regulations were made respecting the dresses of the aldermen, &c.

Ch. 23 Hen. 6. 2 Rot. Pat. m. 3.

In the 23d year of his reign, Henry again

granted a charter to this place, by which, in consideration of the injury the port was constantly receiving from the elements, &c. he granted to the mayor, commonalty, and their successors, certain rents belonging to the crown; and also, further regulated the elections of the mayor and sheriff for the time to come. Ch. 23 Hen. 6.

Two years afterwards the same king granted a charter, whereby he increased the limits of the county of Kingston-upon-Hull, which, reciting the provisions of the preceding charter of the 10th of May, 18th H. VI. (making Hull a county of itself), and that the town of Hesill, in the county of York, and great part of the town of Kingston-upon-Hull aforesaid, were parts of one and the same parish, and that the rest of the said town of Kingston, and the town of North Ferryby, in the said county of York, formed parts of another and different parish, and that he wished to grant the mayor and burgesses of the town or borough of Kingston-upon-Hull a special favour, proceeds as follows: Ch. 25 Hen. 6.

"Concessimus (c) ꝛ p. ꝑsentes concedimus ꝑ nob et heredibz firis quantum in nob est eisdem majori ꝛ burgensibz ꝛ successoribz suis imppm qd dce ville de Hesill North Fereby ac ville ꝛ hameletta de Swanland West Ellay Kyrkelley Tranby Willardby, Wolfreton, Anlaby ꝛ totus

(c) From Mr. Broadley's MS.

Ch. 25 Hen. 6. scitus prioratus de Hautempris in dce com. Eborz quibuscumq; noibus censeantur ℭ tam omia dnia vre ten. ℭ possessiones quæcumq; dcis villis hamelettis ℭ prioratus tam infra eundem com. Eborz quovis modo ptinencia sive spectantia quan eciam quodam pastura sive clausam vocat. Weldernyngham ac quidam fons in eadem pastura sive clausum vocat. Dernyngham Well, quoddam fossatum vocat. Darnyngham Dyk decurrens a dco fonte de Darnyngham Well usq; aquam de Hull; ac omia vre ten. ℭ possessiones quæcumq; int. dict. fossatum de Darnyngham Dyk usq; medium fili aque de Humb ex parte australi ℭ ab eodem fonte de Darnyngham Well ℭ Darnyngham Dyk usq; libtatem sive pcinctum de Kyngeston sup. Hull pdict. vsus orient sint a festo Pasche px futur. sepat. a dco com. Eborz ℭ sint de ℭ in dco com. ville de Kyngeston sup. Hull ac parcella ejusdem com. ℭ infra libtatem ℭ pcinctum ejusdem ville de Kyngeston sup. Hull ℭ non de com. Eborz ℭ q^d omes et singul execucões omin. ℭ singuli brium pceptoz ℭ warrantoz quorzcumq; tam nror. hæredum ℭ successorz nrorz quorumcumq;

en. infra dcas villas de
c dict. villas ℭ hameletta
y Kyrk Ellay Tranby
laby ℭ totum scitum dce
necnon infra dict. vre
imq; eisdem villis hame-
dict. com. Eborz quovis
ancia ut pfertur ac infra

dict. pasturam, sive clausum fontem et fossatum de Darnyngham Dyk & omnia vre ten. & possessiones quecumq; intr. dic. fossatum & dcm medium fili

Ch. 25 Hen. 6.

Two coroners.

Power to elect an admiral.

Ch. 25 Hen. 6. exclusion of all others; and granted the profits of that office to the mayor and burgesses.

Ch. 2 Ed. 4. A charter of confirmation was also granted by Ed. IV, in the 2d year of his reign.

Ch. 6 Ed. 6. Edward VI. granted the manor of Tupcoates, with Myton, &c. the castle and blockhouses in Drypole, to the mayor and burgesses, and separated the blockhouses from the county of York.

Ch. 39 Eliz. and 8 Jac. 1. Charters of confirmation were also granted 39th Eliz. and 8th Jac. I, which conferred additional privileges respecting the duties payable on lead, their school, church, &c. &c. The latter charter also directed that the recorder should be a justice of the peace.

Ch. 13 Car. 2. Charles II. likewise, in 1661, confirmed the preceding charters, enumerating and re-granting many of the privileges already mentioned, together with others of a corporate nature, which it is not necessary for the object of this publication to notice.

These charters were subsequently surrendered and re-granted, &c. in 1683 and 1688, but with no material variations.

Municipal government. The municipal government consists of a mayor, twelve aldermen, a recorder, sheriff, chamberlain, water-bailiff, &c.

Lord lieutenant. The lord lieutenant of the East Riding of Yorkshire is also appointed for the county and town of Kingston-upon-Hull.

Justices of the peace. The mayor, aldermen and recorder, are justices of the peace.

The sheriff is the returning officer. Returning officer.

The right of voting is in the burgesses and freemen. Right of voting.

This place returned members to parliament 3rd Ed. II, then ceased till 12th Ed. II, from which period it has continued to do so. The members have, in all probability, been always elected by the burgesses, notwithstanding the returns have been made by the sheriff in the county court. Willis, Not. Parl. v. 3, p. 66. Carew, 309.

Prynne observes, that "Kyngesten super Hull, as it was made a county within itself, and had special writs directed to the sheriff thereof, (not to the sheriff of Yorkshire,) so he made particular returns of their burgesses by indenture, for which take this pattern instead of many more. An. 38 Hen. VI. apud Leominster. 3 Brev. Parl. 275.

"Hæc indentura facta apud Kyngeston super Hull xix. die Novembris, anno regni regis Henrici Sexti xxxviij. inter Ricum Hyll vic. domini regis, villæ predict. ex una parte; et Edm. Copendale (*and twenty-four others therein named,*) burgenses ejusdem villæ ex altera parte, testatur, quod virtute cujusdam brevis domini regis dicto Rico Hyll, vic. villæ de Kyngeston super Hull predict. direct. et huic indenturæ consut. facta proclamatione in prox. com. tento in villa de Kyngeston super Hull predict. die Lunæ xix. die Novembris, supradict. predictus Edwardus, &c. (reciting all the former names,) qui proclamationi predict. interfuerunt, eligerunt Willum Elard et Return of 38 Hen. 6.

Return 38 Hen. 6.

Johem Spenser duos burgenses idoneos dictæ villæ, ad interessend. et comparend. pro dicta villa de Kyngeston super Hull ad parliamentum dicti domini regis apud Coventre xm die mensis Novembris, prox futur. post dat. præsentium. Qui plenam et sufficientem potestatem pro se et communitate villæ de Kyngeston super Hull predict. habent ad faciend. et consentiend. hiis quæ tunc ibidem de communi consilio Angliæ pro utilitate ejusdem regni Angliæ favente domino ordinari contigerit. In cujus rei testimonium tum sigilla predictorum Edwardus, &c. ex una parte et sigilli dicti Rici Hyll vic. ejusdem villæ ex altera parte præsentibus indenturis alternatim sunt apposita. Dat. apud Kyngeston super Hull predict. die et loco supradictis."

There is no resolution of the House of Commons on the right of voting for this place; and the only entries in the Journals which bear upon the present inquiry, are the proceedings on the petition of Sir James Bradshaw, in 1695, which show that the elections continued to be made in the county court, and the members to be returned by the sheriff and burgesses.

Journals, Nov. 28, 1695, v. 11, 340.

This petition stated, that the petitioner "was desired by a great number of the burgesses of this borough, to serve as one of their burgesses in this present parliament; and accordingly tendered himself as such, the same day that the sheriff of the said town received the writ for the election, *at the next county court*; which was about ten

days after the receipt of the said writ; that to surprise the petitioner, and his friends that intended to vote for him, the said sheriff, to gratify the mayor of the town and some aldermen, privately appointed the election to be the next morning after the receipt of the writ; and though he was acquainted that such notice was not sufficient, yet he proceeded to election next morning," &c. &c.

Petition. 1696.

On March the 2d following, "Colonel Granville reported the matter of the said election as follows:—That the petitioner insisted that this borough, with some adjacent towns, being a county of itself, the election ought to have been at the next county court after the receipt of the writ; and they read a return, 1 *Marsæ*, whereby it appeared that the writ was directed to the sheriff, and commanded him, *Quod facta proclamatione in curia dom. villæ prædi. post receptionem brevis sit die et loco*; and the counsel for the sitting members agreed that had been the form, and returns had been made agreeable to it from that time to this; and the present writ was so. That the petitioner called ——— Graven, who said the county court was adjourned from the 7th to the 18th of October.

Journals. v. 11, 481.

Baker said, the 18th being the anniversary for swearing the mayor and sheriff, after the sheriff was sworn the county court was adjourned to the 2d.

Petition, 1698.

"Ruddebough said, that Anthony Caddy, on the 21st of October, called a county court, and adjourned it to Monday after: that the county court is kept within the verge of the gaol; wherefore, though a prisoner, he had opportunity of being present; and that a boy, who was servant to Hopman, a serjeant, was then cryer; and he heard the court adjourned from the 21st to the 28th; and one Garrard was also present: that on the 22d of October, the sheriff and two freeholders called another county court, the door being shut, and on the next day went to election.

"Mr. Baker said, that at the county courts the great doors into the market-place used to be open, but now they went up the back stairs: that the day before the election he saw Sir James Bradshaw in alderman Ive's shop, and then Sir James declared he would be a candidate: that Sir James sent for the sheriff, and asked, if he had received the writ? and he was answered, he had that morning, and would proceed to election next morning: that Sir James told the sheriff it was not county court day, and used several arguments not to elect till next county court day; but was answered, the sheriff had promised the mayor and aldermen, and would keep his word: that the mayor came to the election in an extraordinary manner, with his mace; and twenty-five were made free that morning: that by com-

putation the burgesses are seven hundred, and at this election five hundred were polled: that some soldiers were drawn up before the hall; but could not say this was more than usual, or that they disturbed or hindered any from polling.

Petition 1695.

"For the sitting member,

"Mr. Caddy, the under-sheriff, was called; who said, that the county court was adjourned from the 18th to the 21st of October, and from the 21st to the 22d, when the writ was delivered to the sheriff; and that day proclamation was made for the election on the next day; on which day the election was made; and from that day the court was adjourned to the 28th instant.

"Mr. Caddy and Mr. Duncalf said, it was the usual way, when they went to the county court, to go the back way, as now; and that the petitioner, after the election was over, said the election was fair.

"Whereupon the committee resolved,

"That Sir William St. Quintin, and Charles Osborn, esq. are duly elected burgesses to serve in this present parliament for this borough," &c. &c. To which resolution the House agreed.

COUNTY OF THE CITY OF LICHFIELD.

Harwood. Hist. Lich. 2.

In the year 656, Oswy, king of Northumberland, established a bishopric at Lichfield, which continued a small village so late as 1128, when Roger de Clinton, succeeding to the see, rebuilt the cathedral, appointed for the first time canons in this church, increased the number of prebendaries, fortified the castle, and made a rampart round the village.

Ib. 9.

Ib. 310.

This city was anciently governed by a guild, of which many of the illustrious men of those times were members, and which was confirmed by a charter granted by R. II, 25 Nov. A. D. 1387, by which the members were enabled to choose a master from among their own body, and to purchase lands.

Ch. 11 R. 2.

This guild being dissolved by act of parliament, Ed. VI, by a charter dated 9th July 1549, granted to the men inhabitants, and residents in the city of Lichfield, in our county of Stafford, "that the said city of Lichfield shall from henceforth be a city incorporated of two bailiffs, and the citizens within the city aforesaid, for ever;" with power to purchase lands, &c., to elect two bailiffs annually, and to appoint twenty-four persons to be burgesses of the said city. It likewise enabled

Ch. 2 Ed. 6.

Incorporated of two bailiffs, &c.

them to plead and be impleaded, "by the name of the bailiffs and citizens of the city of Lichfield," and to hold a court of record; and granted to the bailiffs and citizens all fines and amerciaments, at a fee-farm rent of 20 *s.* a year, to be by them paid to the sheriff of Staffordshire. This charter likewise exempted the bailiffs and citizens, their heirs and successors, from serving on juries, &c. out of the city, and empowered them to have a prison of their own within the city. It likewise created the bailiffs for the time being justices of the peace for the city; and permitted the bailiffs, citizens, and their successors, to perambulate the bounds of the city, the suburbs and precincts thereof, yearly, on the 1st of May, by view of the sheriff of Staffordshire.

Ch. 2 Ed. 6.

Court of record.

Fee-farm rent.

Not to serve on juries out of the city.

A prison.

Bailiffs justices of the peace.

Perambulations how to be made.

The next charter bears date the 15th of Dec. 1553; by which, having first inspected and confirmed the aforesaid charter of Ed. VI., queen Mary grants to the bailiffs, burgesses and citizens of Lichfield, and their successors, that the bailiffs for the time being, with their common clerk, should hold a court of record, to take pleas, &c. of all matters arising within the city, the liberty and precinct thereof, likewise all fines and amerciaments, &c. at a fee-farm rent of 20 *s.* a year, to be paid at the "Exchequer by the hands of our sheriff of the county of the city, with liberty to have a prison of their own in the city; and that the bounds and limits of the city should be perambulated annually on the nativity of the

Ch. 1 Mary.

Court of record, &c.

Fines and amerciaments.

Ch. 1 Mary.

blessed Mary, by the view of our sheriff of our city of Lichfield (a)."

Lichfield made a county of itself.

The charter then separates Lichfield from Staffordshire, and makes it a county of itself, in the following terms: "Ac etiam volumus et per præsentes concedimus pro nobis hered. et successoribus nris præfatis ballivis burgensibus et civibus civitatis nræ prædæ. qd prædicta civitas de Lichefeld ac suburb. et præcinct. ejusdem prout se extendunt vel utuntur quæ infra com. et de com. Staff. jam existunt et continent ab eodem com. a festo Sci Thomæ Apli prox. futur. post dat. præsentium sint separatæ distinctæ et in omnibus penitus divisæ et exemptæ imppm tam per terram quam per aquam et qd eadem civitas de Lichefeld prædicta ac suburbia et præcinctus ejusdem prout se existant vel utuntur sint ab eodem die Sancti Thomæ Apli prædci civitas per se et non parcella dicti com. Staff. et quod eadem civitas Lichefeld ac suburbia et precinctus ejusdem prout se extendant vel utuntur comitatus civitatis Lichefeld per se nolentur nuncupentur repetentur teneantur et habeant imppm (b)."

Election of sheriff.

This charter likewise granted to the bailiffs, burgesses, citizens, and their successors, one sheriff, to be elected annually on Michaelmas day, from among the burgesses, who was to have the

Return of writs.

(a) By the preceding charter of Ed. VI. this perambulation was directed to take place by the view of the sheriff of Staffordshire.

(b) Taken from the original charter.

Ch. 4 Mary.

return of writs, and to hold a county court, with like powers and jurisdictions as those enjoyed by other sheriffs. The bailiffs, burgesses and citizens, are also exempted from serving on juries out of the city, whilst abiding within the same; also all foreign men are excluded from being put upon their juries, &c. The senior bailiff, also, is made escheator within the city aforesaid, and the precinct thereof; likewise the bailiffs justices of the peace, to deliver the gaol, &c. within the same. The charter then gives to the bailiffs, burgesses, citizens, and their successors, power to elect a recorder, and coroner, of the city; the coroner to have equal jurisdiction with other coroners, and also to execute the office of common clerk of the city. To the bailiffs, burgesses and citizens, and their successors, is granted the office of clerk of the market; and to the bailiffs, that of steward of the household within the city; and that the bailiffs shall be associated in the commission issued to make any array of armed men, &c. within the city. Then follows a confirmation of former privileges to the bailiffs, burgesses and citizens, and their successors: "Et ulterius concessim. pro nob. hæred. et successoribz ñris prefatis ballivis burgensibz et civibz civitatis prædt' et successoribz qd licet ipsi ballivi burgens. et cives civitat. prædict. libtat. prædict. vel eorum aliquam aliquo casu emgen. hactenus usi non fuerunt ipsi tamen ballivi et eor. successores et cives civitatis prædictæ de cetero libtatibz illis et eor. quand. plena gaudean tet utantur sine

County court.

Exempt from juries.

Senior bailiff escheator.

Bailiffs justices of the peace.

Recorder.

Coroner.

Clerk of the market.

Steward of the household.

Confirmation of privileges.

CHP. III.

Ch. of confirmation 1st Eliz.

3d April 1559, a charter was granted, confirming that of 1st Mary.

Ch. 40th Eliz. Grant of the manor of Lichfield.

16th May 1598, Q. Eliz. granted the manor of Lichfield to the bailiffs and citizens of the said city; and on the 14th June, in the same year, an agreement was entered into between the bishop, the bailiffs and citizens, that the bishop should for the future nominate the senior bailiff out of certain names by them returned to him.

(c) The close of the cathedral church of Lichfield is no part of the county of the city of Lichfield, but enjoys an exclusive jurisdiction, under charters of Ed. IV. and Eliz. of which Mr. Harwood gives the following account: "The close of the cathedral church, which is bounded by the Minster Pool and the ancient dingle without the walls, in the county of Stafford, and enjoys exclusive privileges. The dean and canons are sole magistrates within the close, and within whose precincts, without their warrant, no person can be attached for debt. But the privilege has at various times been violated, and a charter in the time of dean Heywood, bearing date 13th Dec., 1 Ed. IV. 1461, alleged such arrests, infra clausum, situm, portas et muros ejusdem—metas sibi de jure traditas notorie excedentes, to be the occasion of it. This charter was recited and confirmed by another, dated 28th Feb., 1 Eliz., as is thus expressed: Literas patentes Edwardi quondam regis Angliæ quarti progenitoris mei de confirmatione factas. These charters were also confirmed by king Jac. I." The coroner of Staffordshire is the only officer of that county who has jurisdiction within the close. The justices for the close are authorized to commit to the county gaol.

Harwood's Lichfield, p. 19.

James I, by a charter dated 12th Sept. 1619, confirmed those of 2d Ed. VI. and 1st Mary, likewise all their ancient privileges, and granted certain additional corporate franchises. Ch. 2d Jac. I.

The same king, by a charter granted May 24th, 1624, confirmed all former charters, and made a few additional corporate regulations; and continued to the bailiffs and their brethren the power to make laws for the rule and government of the city, introducing this exception—"except within the cathedral church of St. Chad of Lichfield, and the close of the said church, and the precinct of the said close"(*d*). Ch. 21 Jac. I.

5th Nov. 1664, Car. II. confirmed the former charters granted to this city, and increased certain corporate privileges. Ch. Car. 2.

The charters of this city were resumed by James II.; and a new one granted, which being annulled in 1688, the corporation were restored to their former charters.

This city is governed by two bailiffs, twenty-four burgesses, a recorder, a sheriff, and a steward. Municipal government.

The lord lieutenant of Staffordshire is also lieutenant for the county of the city of Lichfield. Lord Lieutenant.

(*d*) Throughout this charter the cathedral and close are excepted from the jurisdiction of the sheriff, bailiffs, justices, and other officers of the county of the city of Lichfield, also from the jurisdiction of their courts of record, session, &c.

Justices of the peace.

The bailiffs are justices of the peace for the county of the city.

Returning officer.

The sheriff is the returning officer.

Right of election.

Journals, 10 Dec. 1718, v. 19, p. 35.

The right of election is "in the bailiffs, magistrates, freeholders of 40 *s.* per annum, and all that hold by burgage tenure, and in such freemen only as are enrolled."

Freeholds situate within the county of the city of Lichfield do not confer votes for the county of Stafford.

Willis Not. Parl. 50. Prynne, 4 Reg. 1034.

According to Dr. Willis, Lichfield first sent members to parliament 33d Ed. I.; but Prynne states the first return to have been made 4th Ed. II, when it continued to return members to the three succeeding parliaments, and then ceased till the 20th of that king. After this it returned in the 1st, 14th, 27th, and 33d of Ed. III.; and from that time intermitted till the reign of Ed. VI, when it was restored and incorporated.

In 1701 the right of voting came under consideration, on the petitions of Mr. Wyrley and Sir Michael Biddulph against the return of Mr. Dyott and Mr. Walmesley.

Petition, May 1701. Journals, v. 13, p. 525.

"The first point which was controverted was the right of election; and this being formerly a borough, and now for some time past a city and county, it was insisted for Mr. Wyrley, that the right was under a threefold capacity, viz.: in such as held by burgage tenure; freeholders of 40*s.* yearly; and freemen not receiving alms.

11 G. 1, c. 18.

·cting or
declared
rejected

sec. 14:
.10 person
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shall have
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London,
: as afore-
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ıatsoever;
be void."

sec. 14.

Petition, 1716. the bailiffs, magistrates, and freeholders of 40s. per annum, and all that hold by burgage tenure, and in such freemen only as are enrolled, paying scot and lot, with this difference—

"The petitioner's counsel insisted, it was necessary the freemen should pay scot and lot at Lichfield, which was denied by the sitting member's counsel, who insisted, that they paying scot and lot where the freemen lived, though not at Lichfield, was sufficient."

Resolution 1718. The last determination of the House, of 26th May 1701, was read, and the committee came to a similar resolution, with the addition of the word "*there*," after the words scot and lot.

Petitions, 1722. Journals, v. 20, p. 27. On the 19th of Oct. 1722, two distinct petitions were presented against the return of Mr. Chetwynd; one by Mr. Clark, the other candidate, and another by certain citizens, burgesses, freeholders and freemen of this ancient city and county of the same city," stating "that the citizens which have been returned have always been chosen at the sheriff's county court, which court hath been constantly kept once every month, at the distance of twenty-eight days from each county-court day;" and complaining that the sheriff had been prevailed upon, by the importunities of the candidates and their agents, to proclaim the election fourteen days sooner than he ought to have done, of which error he was then informed, both by the under-sheriff and several electors, but that, notwithstanding, he was pre-

Elections not made at the proper county court.

vailed upon to proceed on the day on which the county court ought not to have been held. The petitions also stated, that a protest in writing was made against the election proceeding on that day, accompanied by a request to proceed on the regular and legal day, and which were ordered to be referred to the committee of privileges. No further proceedings took place on these petitions. Several petitions have been subsequently presented against returns for this place, in which the right of election was not disputed, and by which it appears that the elections continue to be made in the county court as heretofore.

Petition.

Resolution 1718.

Election not made at the proper county court.

COUNTY OF THE CITY OF LINCOLN.

ok, Lincoln, in
, contained one
ertainment, and
e of the most
Normans.

Charters:
Ch. 1 Ric. II.

of the 1st or 2d
exempted from
pleading out of the city: enabled to hold pleas of the crown, &c. according to the custom of the city of Lincoln; and exempted from lastage, &c. throughout England. The same charter also directed that the burghmote should be held twice a week; and that the citizens should have their lands and tenements, &c. and hold the same, according to the custom of the city; also all debts and securities, with power to hold pleas respecting all such as were incurred or given at Lincoln. It also freed them from bridgtol, &c. and granted to them all their former liberties and free customs, according to the liberties and laws of the city of London, to hold at a fee-farm rent of 180 *l.* per annum; also, that the citizens of Lincoln "*faciant præpositum quem voluerint de se per annum qui sit idoneus nobis et eis.*"

This charter is inspected and confirmed by one granted 11 Hen. IV, which also inspected and confirmed four charters, of Hen. III, one of Ed. I, Ed. II, and Ric. II, which, in addition to repeated confirmations of the privileges already enumerated, enabled the citizens to elect two persons, by common council of the city, to hold the bailiwick thereof, so long as they should conduct themselves well; also four persons to hold the pleas of the crown, and to see that the bailiffs conducted themselves properly, with power to have a guild merchant: granted to the mayor and citizens the return of writs, by the hands of the bailiffs, who were directed to account to the sheriff of Lincolnshire: exempted the citizens from answering out of the city, except in matters which concerned the crown, or the community of the said city; and enabled them to try all matters arising therein in their burghmote, which is directed to be held before the mayor and bailiffs, at the Guildhall, on Monday in every week, including pleas of land; also excluded all foreign officers from entering into the city, &c.; provided for the building of a new town-hall, and regulated the application of the murage.

Ch. 11 Hen. 4.
Ch. Hen. 3. Ed. 1. & 2. Ric. 2.
Ch. 46 Hen.
56 Hen. 3.
Ch. 9 Ed. 2. 19 Ed. 2.

The charter of Hen. IV. then notices, in the following terms, the amount of the fee-farm rent at that time payable by the mayor and citizens, and their inability to raise it; in consideration of which, the city and precincts, with the exception of the castle, &c. are granted to the mayor and

Ch. 11 Hen. 4.

citizens, the better to enable them to pay the same; also, for the same reason, Lincoln is made a county of itself, with power to the mayor and citizens, instead of the bailiffs, to elect two sheriffs, who, amongst other privileges, are directed to account before the barons of the Exchequer, and not to the sheriff of Lincolnshire, as was the case with the bailiffs.

Ch. 11 Hen. 4. Rot. Cart. 15 & 16.

(a) Insup ad insimiacōem dilectoꝝ nōb majoris & cōitatis civitatis nre pdce accipientes qualit ipi & eoꝝ pdecessores civitatem pdcam ad firmam de nobilibꝫ progenitoribꝫ nris quondam regibꝫ Anglie & nob antiquitus fuerunt & tenuerunt reddendo inde p annū ad Scām ipōꝝ progenitoꝝ nroꝝ & nrm centum & quater viginti libras & qualit tre redditus franchesis libtates pficua & alia commoditates unde dca feodi firma venire & levari solebat ad pscns in tantū devastata subtracta diminuta & exinanita existunt qd eadem feodi firma infra civitatem pdcam devabilis nonq existit nec major & cōitas pdcī eandem feodi firmam de tris franchesijs libtatibꝫ redditibꝫ & pficuis pdcis levare & colligere sciunt nec possunt in status ipōꝝ majoris & cōitatis depressionem & ejusdem civitatis p processum tempore vsiam illam destructōem nisi de auxilio & remedio p nos in hac pte grose pvideat de gra nra spāli concessimus pdctis majori & cōitati civitatem pdcam ac suburbia & pometum ejusdem salvis semp & reservatis

Fee-farm rent of 180 *l.*

Cannot be raised without further assistance.

For remedy.

Grants the city and suburbs to the citizens.

(a) This and the following extracts are transcribed from copies of this and the Ch. of Ed. IV. preserved in the Exchequer-office at Somerset house.

nob & heredibz ñris Ducibz Lancastr' cum Ins-
cilis de fossatis & muris ejusdem infra & extra cum
omnibz suis membris visu franciplegij & quicquid
ad visum franciplegij ptinet ac omnibus alijs fran-
chesijs & libtatibz adeo libe & integre sicut Johes
nup Dux Lancastr pater nr & Blanchea nup
Uxor sua mater nra seu aliquis antecessorz ejus-
dem matris nre seu ipi qui in constabular dci
castri Lincoln fuerunt ac adeo libe & integre sicut
in recordo ejusdem commissionis de audiend &
terminand nup p pdcm dnm & pcem Iorn suum
Robtum Leedes & alios coram Robto de Wo-
loughby cnr & alijs justic' ad hoc assignatis anno
regni carissimi dni & consanguinei ñri regis Ricci
secundi primo pacute continet' de quibz quidem
castro ballio libtatibz & franchesijs pdcis eis
ptm volumi qd occupacio officiarijs & ministris
Ducatus ñri Lancastr' ptineat absq eo qd pdci
major & coitas seu eorz successores exnunc infra
pdcm castrum ballium muros fossata seu franche-
sias de aliquo se inponiant seu misceant aliq̃ qm
omnibz dcorz patris & matris nrorz & antecessorz
suorz faciebant fiend & tenend eisdem majori &
Coitati & successoribz suis de nob & hered ñris
regibz Anglie ut pdcm est p feodi firmam super-
dem. In cujus quidem feodi firme auxilij &
supportacoem & dce civitatis relevamen de gra
nra spali concessimus pdcis majori & coitati qd
ipi eorz heredes & successores de eeo loco balli-
vorz civitatis pdce duos vicecomites de civibz
ejusdem civitatis elig'e possint qdq ijdem major
vicecomites & coitas civitatis illorz ac eorz heredes

Ch. 14 Hen. 4

Except the castle.

Power to elect two sheriffs.

Chart. Hen. 4.

& successores omes libtates & franchesias p dcos
pgenitores ñros ab antiquo concessas here & eis
gaudere valeant & qd nomen ballivoz civitatis
pdce in nomen vicecomitu sit translatum dca
civitatis comitatus civitatis Lincoln sit appellata
Concessimus ecism ex habundanti gra nra pfatis
majori vicecomitibz & coitati libtates franchesias
& pficua subsequencia sibi & eoz heredibz & suc-
cessoribz imppm optinend videlt qd pdca civitas
ac suburbia & peinctum ejusdem castri & ballio
Lincoln ac muris & fossatis ejusdem ut pdem est
exceptis extunc imppm comitatus civitatis Lin-
coln nuncupent' et qd major civitatis pdce qui p
tempore fuit escaetor nr. & heredum ñroz infra
eandem civitatem ac suburbia & peinctum ejusdem
existat & sacrm suu p dco officio escaetoris eodem
tempore & coram eisdem penis faciat coram quibz
sacrm faciet p dco officio majoratus Et qd vice-
comites dce civitatis p tempore existentes coram
majore & coitati ejusdem civitatis in Gihalda ejus-
dem jurati existant absq aliquibz bribz inde penes
nos & heredes ñros psequend. Ac qd escaetores
& vicecomites civitatis pdce qui p tempe fuerint
jurisdictionem potestatem & libtatem faciendi exe-
cudem de omi eo qd de officia escaetoris &
vicecomitu infra civitatem suburbia & peinctum
pdca ptinet here possint qdq dci vicecomites
p tempore existentes com suos de sex septi-
manis in sex septimanas modo quo com in com
Lincoln tenent tenere possint & qd ipi eur suis
uti & eis here & tenere possint modo quo antiquitus
infra civitatem pdcam coram majore & ballivis

City of Lincoln, and the precinct, except the castle.

To be called the county of the city of Lincoln.

Mayor to be escheator.

Sheriffs to be sworn before the mayor, &c.

Escheator and sheriff to execute their offices fully.

Sheriffs to hold their county courts as the sheriff of the county of Lincoln.

eiusdem consuetum & usitatum fuit ac qd dcj major vicecomites & coitas pficua cur' pdeas here possint modo & forma quibz ballivi civitatis pdce ea antiquitus huerunt ac qd escaetores & vicecomites civitatis pdce qui p tempore fu'int singlis annis pfra & compotos sua ad Scc̃m nr̃m & heredum ñroz p attornatu vel attornatos suos sufficientem potestatem p tras patentes comi sigillo civitatis pdce sigillatas ad hoc hentem seu hentes fac'e valeant qdo thes̃ & barones de eodm Sccio dcos attornatu vel attornatos ad hoc faciend recipiant absq eo qd pdci escaetor & vicecomites seu eor successores ad veniend ext' civitatem pdcam p compoto de aliquibz rebz que officiū escaetoris seu vicecomitis civitatis pdce concernunt reddendo compellant."

Ch. 1st Hen. 4.

City courts to be held as formerly.

Escheator and sheriffs to account at the Exchequer, &c.

This charter also appointed the mayor, sheriffs, and four of the most discreet of the citizens, to be justices of the peace for the county of the city, with the same powers therein as those of the county of Lincoln previously had: granted all fines, &c. to the corporate body, and a fair for fifteen days: excluded the mayor, sheriffs and justices, &c. from exercising their respective offices within the cathedral of Lincoln, or the close, reserving all former privileges to the dean and chapter.

Justices of the peace.

Then follows the reservation to the mayor and citizens of former privileges, in these terms: "Nolentes qd p ĩnslacõem al'ĩnsacõem & mutacõem nomi ballioz civitatis pdce neo p aliquam

Reservation of former privileges.

Ch. 11 Hen. 4. alium statum seu colorem aliqua vel aliquas franchesias libtates privilegia immunitates quietancias seu pficuos pfatis majori & coitati eos heredibus successoribus tenentibus & residentibus infra civitatem suburbia & pcinctum pdca p nobiles pgenitores ñros antiquitus concessa quovis modo devegata restricta diminuta seu abreviata existant sed qd pdci major vicecomites & coitas eos heredes & successores omnia & singla franchesias libtates privilegia immunitates quietancias commoditates & consuetudines de articulo in articulum de vbo in vbum teneant teneant & utant quie pdci majori ballivi & coitas civitatis pdce eos antecessores & predecessores ante mutacoem mona hactenus pdcos ex concessionibus pgenitos ñros hiesunt & usi fuerunt."

It will appear from a return hereafter noticed, dated 2d Hen. V, that this charter continued to be acted upon under the Lancastrian kings, as the members for this place were at that time elected in the county court, and returned by the sheriffs of the city.

Ch. 5. Ed. 4. Edward IV. however, as was not unfrequently the case after the accession of the house of York, granted a charter of a similar nature to that of Hen. IV, enabling the mayor and citizens to elect sheriffs, and making the city a county of itself, in terms very similar to those already noticed, and granting the same privileges as those which have been just enumerated, with a similar exception in favour of the church; made further

provision in aid of the fee-farm rent of the city, and confirmed the former privileges of the mayor and citizens, as follows,—

Ch. 5. Bl. 4.

Reservation of former privileges.

"Concessimus præfatis majori vicecomitibus et coïtati et eor. hæredibus et successoribus illas sex libras de firma quam tenarii civitatis prædictæ nobis annatim reddunt ad Scacarium nostrum pro gilda sua habend. infra civitatem prædictam habend. eisdem majori et vicecomitibus et coïtati et eor. hæredibus et successoribus imperpetuum in auxilio solutionis firmæ civitatis prædictæ Nolentes quod per translationem alterationem et mutacionem nominum ballivorum civitatis prædictæ nec per aliquam aliam causam seu colorem aliquo vel aliquas franchesias libtatum privilegior. immunitatum quietancia. seu proficuor. præfatis majori et coïtati eor. hæredibus successorib. tenentibus et residentibus infra civitatem suburbia et procinctum prædictæ per nobiles progenitores nostros antiquitus concesse quovis modo devegata restricta diminuta seu abreviata existant, sed quod prædicti major vicecom. et coïtas eor. hæredes et successores omnia et singla franchesias libtates privilegia immunitates quietancias commoditates et consuetudines de articulo in articulum de verbo in verbum habeant teneant et utantur quæ prædicti major balli et coïtas civitatis prædictæ eor. antecessores et predecessores ante mutationem nominum ballivorum prædictorum ex concessionibus progenitorum nostrorum habuerunt et usi fuerunt."

Ch. 5 Ed. 4.

The same charter also, for the relief of the mayor and citizens, granted them the villages of Braunston, Waddington, Bracebrig and Canwick, separating them from the county of Lincoln, and adding them to that of the city, in the following terms:—

Braunston, &c. separated from Lincolnshire, and made part of the county of the city.

"Volentesque pro relevamine majoris coitati et civitatis illius aliqualiter providere de gratia spali ac ex certa scientia et mero motu nostris pro nob. et hæred. nost. concedimus Thomæ Grantham nunc majori et civibus civitatis Lincoln ac nunc eidem majori vicecom. et coitati. civitatis prædictæ et suc. suis imperpetuum quod villæ et villatæ de Braunston Waddington Bracebrig et Canwick (b) quæ sunt infra et de com Lincoln a festo Paschæ jam prox. futur. pro perpetuo sint distinctæ et separatæ a corpori dicto com. Linc. ac annexæ et unitæ com. civit. prædic. et parcella ejusd. com. et de ac infra comitatum civitatis illius ac libtatem et procinctum ejusdem et non de dicto com. Linc. nec parcella ejusdem aut infra eundem com. Linc. existant quibuscumque noibus prædict. villæ et villat. sive aliqua inde parcella nuncupentur aut appellantur quovis modo et prædicta civitas et prædict. villæ et villat. superius recitata sint de com. civitatis Lincoln et com. civitatis Lincoln de cætero nuncupentur."

(b) These places still continue part of the county of the city of Lincoln.

The charter then proceeds to exclude the sheriff, and other officers of the county of Lincoln, from executing any writs or process within the said places, or any part of the county of the city of Lincoln, all of which are directed thenceforth to be executed by the mayor and sheriffs of the county of the city; and gives the justices of the peace, escheator and coroner respectively, exclusive jurisdiction within the same. Ch. 5 [illegible]

This charter also gives a power to fine, at discretion, those who should refuse to execute any offices to which they were elected or appointed: grants certain rents, &c. therein enumerated to the mayor, sheriffs and citizens, together with all waifs and estrays, &c. and again confirms all their former privileges, in the following terms:—

Reservation of privileges.

"Volumus etiam pro nobis et hered. et successor. nostris concedimus quod iidem major et cives hered. et successores sui omnia et singula libtates privilegia immunitates franchesias consuetudines allocationes et quietancias prædecessorib. suis vel eis et successor. suis tam per cartas sive literas patentes progenitorum et predecessorum nostrorum quondam reg. Angliæ quam nostras quascumque qualiter cumque concess. habeant et teneant ac eisdem plene gaudeant et utant juxta tenorem vim et effectum cartarum et literarum illarum unicam omnibus aliis et singulis lib. et liberis consuetudines per ipsos majores cives et predecessores suos ab antiquo rationabiliter habeant et usitatis."

Municipal government.

The municipal government consists of a mayor, recorder, twelve aldermen, two sheriffs, four coroners, and forty-eight common councilmen.

Lord lieutenant.

The lord lieutenant of the county of Lincoln is also appointed for the city of Lincoln and county of the same.

Justices of the peace.

The mayor, sheriffs, and four of the citizens, are the justices of the peace for the county of the city of Lincoln.

The sheriffs are the returning officers, and the elections are made in the county court.

Freeholds within the county of the city do not confer votes for the county of Lincoln (c).

Right of election.

Lincoln was one of those places which were required to send two of their citizens to Montfort's parliament (49th Hen. III.) and likewise has regularly returned members to parliament from the 23d Ed. I, who are chosen by the citizens and freemen.

I find no resolution of the House of Commons as to the right of voting for this place, but the right which now obtains seems always to have prevailed, at least the following returns show that the citizens alone elected, not only in the reign of Ed. II, before it was made a distinct county, but subsequently, and I have met with no instance in which this usage has varied.

(c) At the county election of 1818, some persons tendered to vote in right of freeholds situate within the county of the city, but were rejected by the assessor.

"A tres nobles hom. et sages sirs William de Erymyne meire et la communaltie de Nicole quelle devent et peent d'ors et revenues, pur ceo sirs qiri nous avions esluts Henry de Halkethorne et Thomas Gamel nos conciteyns devenir au parliament nostre seignr. le roi pur la citee Nicole selonc le peirports le briefs le dyt nostre seignr. le roi et eux mesmes le graunterent, et ore ledyt Thomas ne se deygne venir pur riens que nous sauions faire, par quoy sire nous aveis esluitz Alayn de Hodeston en le lieu le dyt Thomas a fait et assentir pur la dice citee selonc la teneure le dyt briefs, et vous prions cher sier sil vous plest que ledytz Henr. et Allan voillets resceivire pur la citee avant dite. En tesmoygnance de quele chose a cestez presents avons mys le seal de nostre meretie. Don a Nicole le ij jour de May lan de reigne nostre seignr. le roy Edward quarisme quar Dieu garde."

Return. 2 Hen. 5.

Brev. Parl. pt. 3. p. 277.

We have seen that Lincoln was made a county of itself in the 11th Hen. IV.; and the annexed return of the 2d Hen. V. shows, that the form of election thereupon altered, though the electors remained the same, the return being then made by the sheriffs in the county court, instead of by the mayor.

"Hæc indentura facta inter Thomam Canterbury et Thomam Reve vic. civitatis Lincolne ex una parte et Petrum de Saltby majorem dictæ civitatis, William Bliton, (and eighteen others by name,) cives civitatis prædictæ ex altera, Testa-

Return, 2 Hen. 5. Ib. p. 278.

Return, 2 Hen. 5.

tur quod facta proclamatione in pleno com. civitatis Lincolne tent. apud Lincolne in guildaula ejusdem civitatis die Lunæ prox. ante festum Sancti Lucæ Evangelistæ anno regni regis Henrici Quinti secundo, de die et loco in brevi domini regis eidem vic. direct. tenend. præfatus major et reliqui prænominati, in propriis personis suis tunc ibidem existent, ex eorum unanimi assensu et aliorum fide dignorum tunc ibidem existentium, eligerunt Johem Ryley, et Thomam Tering, cives pro se et communitate com. civitatis prædictæ essend. ad parliamentum domini regis apud Westm. die Lunæ prox. post octabas Sancti Martini prox. futur. post dat. præsentium tenend. ad faciend. et consentiend. iis quæ dicto parliamento tunc contigerit ordinari secundum tenorem brevis domini regis eisdem vic. direct. In cujus rei testimonium præsentibus indenturis tam sigilla dictorum vic. quam sigilla dictor. majoris et reliquorum sunt appensa. Dat. die et loco et anno supradictis."

In the 10th W. III. a writ of mandamus was quashed for misdirection, being directed to the mayor of the city of Lincoln, "*in the county of Lincoln*," instead of in *the county of the city of Lincoln*.—R. *v.* Morrice, 12 Mod. Rep. 190.

LONDON.

ALTHOUGH London is ranked amongst the corporate counties, its situation is in most respects different from the rest; and I conceive I am justified in attributing its origin to prescription, no date being given to its creation. Lord Coke mentions London as a city by prescription, and likewise describes it as a county of itself, but without date; and observes, "It is clear that so long as this city has been a county of itself, so long there have been sheriffs, for it cannot be a county without sheriffs." If sheriffs are the indicia of a county, London must have been one at the time of the Conquest, as the following charters of William I. show that it then had a sheriff. 4 Inst. 248.

"William the king greets William the bishop and Godfrey the portreeve, and all the burgesses of the burg within London, French and English, friendly. And I declare to you, that I will that you be all law worthy as ye were in king Edward's days; and I will that each child be his father's heir after his father's days. And I will not that any man command any wrong to be done unto you. God you hold." 1 Ch. W. I.

2 Ch. W. 1. "William the king greets William the bishop and Swegn the sheriff, and all my thanes in East Saxony; whom I hereby acquaint, that pursuant to an agreement I have granted to the people my servants, the hide of land at Gyddesdune. And also, that I will not suffer either the French or the English to hurt them in anything."

All the corporate counties, with the exception of London, were created by royal charters, granted between the reigns of Ed. III. and Jac. I, which recognize them, at the time of the grant, as integral parts of some other county, from which they were thereby separated, and made distinct counties. But London, instead of being carved out of any of the adjacent counties, holds Middlesex at a fee-farm rent, and appoints its sheriff by virtue of the following charter of Hen. I.

Ch. Hen. 1. (a) "Henry, &c. &c. Know ye, that I have granted to my citizens of London to hold Middlesex to farm for three hundred pounds upon account to them and their heirs; so that the said citizens shall place as sheriffs whom they will of themselves, and shall place whomsoever, or such one as they will of themselves, for keeping of the pleas of the crown, and of the pleading of the same, and none others shall be justice over the

(a) Translations of the charters granted to the city of London have frequently appeared in print. These extracts are principally taken from the history of London recently published by Mr. Lambert.

same men of London; and the citizens of London shall not plead without the walls of London for any plea. And be they free from scot and lot, and danegelt, and of all murder, and none of them shall wage battle. And if any of the citizens shall be impleaded concerning the pleas of the crown, the man of London shall discharge himself by his oath, which shall be adjudged within the city." This charter then proceeds to exempt the city from the liability of having any of the king's household lodged there by force: to free the goods and merchandizes of the citizens from all tolls, &c. throughout England: to grant that the churches, barons and citizens, should peaceably and quietly have and hold their sokes, with all their customs: that no citizen should be amerced beyond one hundred shillings: that there should be no miskenning in the hustings, folkmote, or other pleas within the city: that the citizens should enjoy their properties, both real and personal, according to the constitutions of the city: and have power to attach the goods of all debtors within the city who may neglect to discharge their debts to the citizens: and lastly, confirms to the citizens the privileges of hunting as enjoyed by their predecessors, in Middlesex, Surrey, and the Chiltern. Ch. Hen. 1.

This charter was confirmed by Hen. II, who extended the exemptions from tolls, &c. Ric. I. also, in the 5th year of his reign, granted a similar Ch. Hen. 2. Ch. R. 1.

Ch. R. 1. charter, having previously enabled the citizens to choose a mayor instead of their bailiff. The same king also granted a third charter, which merely related to the weirs on the Thames.

Ch. John. King John granted five charters to London, and three of them in the first year of his reign. The first confirmed those of Hen. I. & II, and R. I, and granted that the citizens should be free of toll, &c. The second related to the weirs on the Thames and Medway. The third regranted the sheriffwicks of London and Middlesex to the citizens, and enabled them to choose their own sheriffs as follows:

Ch. 5th July, 1st John. "John, &c. Know ye, that we have granted, and by this our present writing confirmed, to our citizens of London, the sheriffwicks of London and Middlesex, with all the customs and things to the sheriffwick belonging, within the city and without, by land and by water, to have and to hold to them and their heirs, of us and our heirs, paying therefore three hundred pounds of sterling money, at two terms of the year, that is to say, at the Easter exchequer, one hundred and fifty pounds; and at the Michaelmas exchequer, one hundred and fifty pounds; saving to the citizens of London all their liberties and free customs. And further we have granted to the citizens of London, that they among themselves make sheriffs whom they will, and may amove them when they will; and those whom they make sheriffs,

they shall present to our justices of our exchequer of those things which to the said sheriffwick appertain, whereof they ought to answer us; and unless they sufficiently answer and satisfy us, the citizens may answer and satisfy us the amerciaments and farm, saving to the said citizens their liberties as is aforesaid, and saving to the said sheriffs the same liberties as other sheriffs have; so that if they which shall be appointed sheriffs for the time being shall commit any offence, whereby they ought to incur any amerciament of money, they shall not be condemned for any more than to the amerciament of twenty pounds, and that without the damage of other citizens, if the sheriffs be not sufficient for the payment of their amerciaments: but if they do any offence whereby they ought to incur the loss of their lives or members, they shall be adjudged as they ought to be according to the law of the city; and of these things which to the said sheriffs belong, the sheriffs shall answer before our justices at our exchequer, saving to the said sheriffs the liberties which other citizens of London have. Also this grant and confirmation we have made to the citizens of London for the amendment of the said city, and because it was in ancient times farmed for three hundred pounds: wherefore we will, and stedfastly command, that the citizens of London, and their heirs, may have and hold the sheriffwick of London and Middlesex, with all things to the said sheriffwick belonging, of us

Ch. 5th July, 1st John.

Ch. 5th July, 1st John.

and our heirs, to possess and enjoy hereditarily, freely and quietly, honourably and wholly, by fee-farm of three hundred pounds; and we forbid that none presume to do any damage, impediment or diminishment to the citizens of London of these things which to the said sheriffwick do or were accustomed to appertain: also we will and command, that if we or our heirs, or any of our justices, shall give or grant to any person any of those things which to the farm of sheriffwick appertain, the same shall be accounted to the citizens of London, in the acquittal of the said farm at our exchequer. Witness, &c."

Ch. 3 John.

In the 3d year of his reign, John granted another charter, which contained provisions respecting the weavers guild; and in the 16th, his fifth and last, confirming former privileges, and enabling the citizens to choose a mayor.

The privileges and franchises of London which subsequently were so frequently confirmed by act of parliament as well as by charter, were not forgotten at Runnemead; it being one of the provisions of Magna Charta, that "the city of London shall have all its ancient privileges and free customs, as well by land as by water." A similar clause was inserted in the great charter of Hen. III.; who granted several charters, confirming those of John and the two preceding Henry's.

Magna Charta.

As we have now arrived at a period when the early privileges of London were so solemnly confirmed, and as the numerous subsequent charters

throw no light on the subjects connected with this inquiry, I shall not enumerate them, but proceed to notice shortly the various Acts of Parliament, by which the privileges of the citizens have been confirmed, and their elective rights determined.

Acts of Parliament.

The privileges, &c. of the citizens were confirmed by Parliament, in the 14th and 50th and 51st Ed. III, frequently during the reign of R. II, also by the 27th H. VIII, c. 24, s. 13; 32d H. VIII, c. 20, s. 8; and 22d & 23d Car. II, c. 22, s. 12. But the most material statute, in this respect, is the 2d W. & M. which is intituled, "An Act for reversing the judgment in a *Quo Warranto* against the city of London, and for restoring the city of London to its ancient rights and privileges;" the third section of which it will be material to insert, as follows:—"And be it further declared and enacted, by the authority aforesaid, That the mayor and commonalty and citizens of the city of London, shall and may for ever hereafter remain, continue, and be, and prescribe to be, a body corporate and politic, *in re facto et nomine*, by the name of the 'Mayor and commonalty and citizens of the city of London,' and by that name, and all and every other name and names of incorporation by which they, at any time before the said judgment, were incorporated, to sue, plead and be impleaded, and to answer and to be answered, without any seizure or forejudger of the said franchise, liberty and privilege, or being thereof excluded or ousted, for or upon any pre-

2 W. & M. sess. 1. c. 8, s. 3.

2 W. & M. sess. 1. c. 8. s. 3.

tence of any forfeiture or misdemeanour, at any time heretofore or hereafter to be done, committed or suffered; and the said mayor and commonalty and citizens of the said city, shall and may, as by law they ought, peaceably have and enjoy all and every their rights, gifts, charters, grants, liberties, privileges, franchises, customs, usages, constitutions, prescriptions, immunities, markets, duties, tolls, lands, tenements, estates and hereditaments whatsoever, which they lawfully had, or had lawful right, title or interest of, in or to, at the time of the recording or giving the said judgment, or at the time or times of the said pretended forfeitures."

It cannot escape observation, that this act, and indeed all the others, treat London as a city, and not as a county. The same observation may be made with respect to the charters, excepting so far as they enable the citizens to appoint sheriffs. This power, however, together with the entire separation of London from every other county, has caused it to be ranked amongst the corporate counties, notwithstanding the language of the statutes and charters affecting its privileges.

But however London may differ from other corporate counties, either in the time or mode of its creation, in one respect its inhabitants share the disadvantages of the least favoured, inasmuch as freeholds situate within the city of London do not confer votes, either for the city or the county of Middlesex.

Right of election.

The right of election for London is now settled by the 11th G. 1, c. 18, which effectually confines this right to the liverymen. It may be supposed that the circumstance of London returning four instead of two members, might have originated in its being a county of itself; that, however, is not the case, as from the earliest return to the present day, no persons have been returned, or claimed to be returned, as knights for the county of the city.

Writ, 26 Ed. 1.

London first returned members in the 26 Ed. I, when the writ was directed to the sheriffs, commanding them, "Quod de civitate predicta *duos cives* de discretioribus et ad laborandum potentioribus sine dilatione eligi."

Prynne, 2 Reg. 40.

Prynne, 3. Brev. Parl. Red. 374.

The next writ and return bear date 1 Ed. II, and are as follows:—"Edwardus Dei gratia, &c. vicecomitibus London, salutem: Quia super quibusdam negotiis nos in ista recenti susceptione regiminis regni nostri, tam viz. super huminatione corporis celebris memoriæ domini Edwardi quondam regis Angliæ genitoris nostri, cujus animæ propitietur Deus, quam super solemnitate nostrorum sponsalium, et coronationis nostræ, authore domino, celebrand. aliisque arduis negotiis statum ejusdem regni contingentibus, cum prelatis et magnatibus de eodem regno, habere volumus colloquium specialiter et tractatum, vobis præcipimus firmiter injungentes, quod de civitate predicta duos cives de discretioribus et ad laborandum potentioribus, sine dilatione eligi, et eos

Writ, 1 Ed. 2. ad nos apud Northampton, in quindena Sancti Michaelis proximo futuro venire faciatis, ita quod dicti cives plenam et sufficientem potestatem, pro se et communitate civitatis prædictæ tunc et ibidem habeant ad faciendum quod tunc de communi consilio ordinabitur in præmissis, ita quod pro defectu hujusmodi potestatis, negotia prædicta infecta non remaneant quovis modo. Et habeatis ibi nomina dictorum civium et hoc breve. Teste, &c.

Return. "Mittimus vobis Willimum de Coumbemartyn et Henricum de Dunolmia concives nostros sufficientem habentes potestatem secundum quod in brevi continetur."

The first writ requiring the return of four members is the following, dated 29 Ed. 3.

Writ, 29 Ed. 3. Edwardus Dei gratia, &c. Vic. London salutem: licet nuper pro arduis negotiis nos et regnum nostrum Angliæ concernentibus Parliamentum nostrum apud Westm. ad diem Jovis in crastino Sancti Martini prox. futur. tenere ordinavimus, ex certis tamen causis evidentibus dictum Parliamentum usque ad diem Lunæ prox. post festum Sancti Edmundi Regis et Martyris prox. futur. duximus prorogand. per quod cives quos ad venien. ad dictum Parliamentum ad dictum crastinum tenend. per vos summoneri præcipimus, ad locum prædictum attendere non oportet istâ vice; vobis nihilominus præcipimus, firmiter injungentes, quod de civitate prædicta *quatuor cives* de discretioribus et probioribus civibus ejusdem civi-

tatis eligi, et eos ad dictos diem Lunæ et locum venire fac. ita quod iidem cives plenam et sufficientem potestatem pro se et communitate civitatis prædictæ habeant ad faciend. et consentiend. iis quæ tunc de communi consilio favente domino ordinari contigerit super negotiis antedictis, ita quod pro defectu potestatis hujusmodi seu propter improvidam electionem civium prædicti. dictæ nostri et regni nostri negotia infecta non remaneant. Et habeatis ibi nomina prædictorum civium et hoc breve, teste meipso, &c.—22d October, 29th Ed. III. Writ, 29 Ed. 3.

"Eligi fecimus Adam Franceys, Johem de Stodey, Simonem de Bedington, Adam de Acres, *quatuor cives* civitatis London essend. coram vobis ad diem Lunæ et locum in brevi isto content. ad interessend. in instanti parliamento, plenam et sufficientem potestatem pro se et communitate civitatis prædictæ habentes ad faciend. et consentiend. iis quæ in eodem parliamento de communi consilio favente domino ordinari contigerit, prout interitis præcipitur." Return.

The next writ but one required the election of two citizens only: "Quod de civitate prædicta *duos cives* de discretioribus et ad laborand. potentioribus eligi, et eos ad dictos diem et locum venire faciatis." But the writ of the 34th Ed. III. again commanded the return of four: "Quod de civitate prædicta *quatuor cives* de discretioribus et probioribus civibus ejusdem civitatis eligi et eos ad dictos diem et locum venire Writ, 32 Ed. 3. 34 Ed. 3.

Writ, 34 Ed. 3. facias, ita quod cives in hustingo prædictæ civitatis eligantur, &c." which form, for electing four citizens, Prynne observes, hath continued ever since.

I have inserted these writs and returns at length, to show that the elections for London were always treated as purely corporate, and that no reference was made to the circumstance of its being a county of itself; but that the return of four members originated, as is supposed by Prynne, in "Our king's extraordinary special grace and favour to the city, for their loyalty, good affection to, and ready assistance of them upon all occasions; and 2dly, the greatnesse, opulency, populosity, honour and splendor of the city of London, the metropolis, head city, chief mart, strength and magazine of the kingdom, where our kings usually kept their courts and residence."

3 Parl. Red. p. 377.

11 G. 1, c. 18. We now come to the act, passed in 1724, intituled, "An Act for regulating Elections within the city of London, and for preserving the peace, good order, and government of the said city;" which recites, that "Whereas of late years great controversies and dissentions have arisen in the city of London, at the election of citizens to serve in Parliament, and of mayors, aldermen, sheriffs, and other officers of the said city; and many evil-minded persons, having no right of voting, have unlawfully intruded themselves into the assemblies of the citizens, and presumed to give their votes at such elections, in manifest violation of the rights

and privileges of the citizens, and of the freedom of their elections, and to the disturbance of the public peace: And whereas great numbers of wealthy persons, not free of the said city, do inhabit, and carry on the trade of merchandize and other imployments, within the said city, and refuse or decline to become freemen of the same, by reason of an ancient custom within the said city, restraining the freemen of the same from disposing of their personal estates by their last wills and testaments: And whereas great dissentions have arisen between the aldermen and commons of the common council of London, in or concerning the making or passing of acts, orders or ordinances in common council, which, if not timely settled and determined, may occasion great obstructions of the publick business and concerns of the said city, and create many expensive controversies and suits at law, and be attended with other dangerous consequences: Now to the intent that suitable remedies may be provided for preserving the privileges of the city of London, and the freedom of election therein, *and for settling the right of such elections*, and putting a stop to the aforesaid controversies and dissentions, and the ill consequences of the same," &c. "Be it enacted," &c. "That at all times from and after the first day of June 1725, upon every election of a citizen or citizens to serve for the said city of London in Parliament, and upon all elections of mayors, sheriffs," &c. "the presiding officer or officers at such elections shall, in case a poll be demanded

11 G. 1. c. 18.

11 G. 1, c. 18. by any of the candidates, or any two or more of the electors, appoint a convenient number of clerks to take the same, which clerks shall take the said poll in the presence of the presiding officer or officers, and be sworn by such officer or officers truly and indifferently to take the same, and to set down the name of each voter, and his place of residence or abode, and for whom he shall poll, and to poll no person who shall not be sworn, or, being a Quaker, shall not affirm, according to the direction of this Act; and every person, before he is admitted to poll at any election of any citizen or citizens to serve in Parliament, or of any officer or officers usually chosen by the liverymen of the said city as aforesaid, shall take the oath hereinafter mentioned, or, being one of the people called Quakers, shall solemnly affirm the effect thereof; that is to say:

Oath. "You do swear, That you are a freeman of London, and a liveryman of the company of and have so been for the space of twelve calendar months; and that the place of your abode is at in and that you have not polled at this election."

The statute then prescribes the oath to be taken at all wardmote elections, and proceeds as follows: "And if any person or persons shall refuse or neglect to take the oaths hereby respectively appointed to be taken, or, being a Quaker, shall refuse or neglect to make such solemn affirmation as aforesaid, then and in every such case the poll

or vote of such person or persons so neglecting or refusing shall be, and the same is hereby declared to be null and void, and as such shall be rejected and disallowed." 11 G. 1, c. 18.

Further provisions are also made by sec. 14: sec. 14. "And it is hereby further enacted, That no person or persons whatsoever shall, from and after the said first day of June 1725, have any right or title to vote at any election of a citizen or citizens to serve in parliament for the said city, or of any mayor or other officer or officers to be chosen by the liverymen thereof, who have not been upon the livery by the space of twelve calendar months before such election, and who shall not have paid their respective livery fines, or who, having paid the same, shall have received such fines back again, in part or in all, or shall have had any allowance in respect thereof; and no person or persons whatsoever shall have any right to vote at any election of a citizen or citizens to serve in parliament, or of any mayor, alderman, or other officer or officers of or for the said city, or any the wards or precincts thereof, who have at any time within the space of two years next before such election or elections, requested to be, and accordingly have been discharged from paying to the rates and taxes to which the citizens of London, inhabiting therein, are or shall be liable as aforesaid, or any of them, or have within the time aforesaid had or received any alms whatsoever; and the vote of every such person shall be void."

COUNTY OF THE TOWN OF NEWCASTLE-UPON-TYNE.

Brand's Hist. of Newcastle upon Tyne, v. 2, p. 129.

NEWCASTLE was one of the residences of the Northumbrian kings, and was subsequently held by the earls of Northumberland, from the time that district ceased to be a separate kingdom, till shortly after the Norman conquest. According to Mr. Brand, the first charter granted to Newcastle is that of Hen. II, by which the burgesses are exempted from the payment of toll, &c. &c.

Ib. 130.

Ch. 2 John.

King John, by charter dated Feb. 7th, 1201, increased the fee-farm rent; and by a second charter, of 9th of February in the same year, confirmed the before-mentioned charter of Hen. II. The same king granted a third charter to Newcastle, dated at Stockton, 5th Feb. 1214, by which he confirmed to the burgesses, by the designation of "probi homines de Novo Castello super Tynam," the town, with the appurtenants, in fee-farm, for the rent of 100*l.*; and by a fourth, dated Durham, Jan. 28th, 1216, granted and confirmed to the burgesses of Newcastle-upon-Tyne, amongst others, the privilege, that none of them should be

Ch. 15 John.

Ch. 17 John.

distrained out of the town, &c.; also, that pleas should be held in Newcastle concerning debts and recognizances lent and made there, and that no sheriff or other officer should have scotale within the borough. This charter likewise contained a grant of, and exemption from, certain customs and duties, and confirmed all former privileges. Ch. John, 1216.

Henry III, by charter dated July 2d, 1235, confirmed former charters, &c.; regulated the fee-farm rent, &c.; and recognised and confirmed the before-mentioned exemption from the interference of the sheriff, in these terms: "Concessimus etiam eis pro nobis et heredibus nostris quod in nullo sint respondentes vicecomiti nec constabular' de hiis quæ ad ipsos pertinent sicut carta predicti patris nostri quam inde habent rationabiliter testatur." Ch. 19 Hen. 3. Sheriff excluded. Brand, v. 2, p. 139.

By another charter, dated 1251, Hen. III, changed the government of Newcastle from that of bailiffs to a mayor. And by a third, granted 18th Oct. 1253, the burgesses were empowered for ever to choose two coroners, who should do all things pertaining unto the office of coroner within the town. Ch. 35 Hen. 3. Ch. 37 Hen. 3. Coroners.

In 1276, Ed. I, by letters patent, empowered the burgesses of Newcastle to bequeath their land and tenements to whom they pleased; and in the same year, their exemption from being impleaded out of the town was twice allowed. Ch. 4 Ed. 1.

Quo warranto, 1290.

In 1290, a *quo warranto* issued, calling upon the burgesses to show by what authority they had chosen a mayor, upon which occasion the town was seized by the crown. And in 1293 another *quo warranto* issued, calling upon the bailiffs and community of Newcastle-upon-Tyne to show what claim they had to the return of the king's writs, &c.; and ultimately, their liberties were resumed by the crown. But in 1294, a writ was directed to the sheriff of Northumberland, ordering him to restore "the town of Newcastle-upon-Tyne into the hands of the burgesses, to be held as before."

Liberties seized and restored.

Brand, v. 2, p. 145.

Ch. 22 Ed. 1.

Dec. 8th, 1294, Ed. I, by charter, exemplified and confirmed the charters of 19th and 35th of Hen. III.

The same king also, by a charter, bearing date Dec. 20th, 1299, granted certain lands and tenements in Pampeden, which adjoined Newcastle, to the burgesses, to be united to that town, for the increase, improvement and security thereof, to be held in free burgage, in the same manner as those of Newcastle, subject to the same customs, entitled to the same liberties, and forming thenceforth part of the same town and borough, which charter was granted in the following terms:

Ch. 27 Ed. 1, granting certain lands at Pampeden to Newcastle.

"Edwardus, &c. Sciatis quod dedimus et concessimus et hac carta nostra confirmavimus pro nobis et heredibus nostris delectis burgensibus et

Ch. 27 Ed. 1.

probis hominibus nostris ville Novi Castri super Tynam omnes terras et tenementa cum pertinentiis in Pampeden in Byker juxta predictam villam Novi Castri cum redditibus et serviciis omnium tenentium nostrorum et heredum suorum cum suis pertinen', que habuimus ex concessione et reddicione Roberti de Byker et Lodararie uxoris ejus et que iidem Robertus et Lodararia de nobis prius tenuerunt de hereditate ipsius Lodararie habendum et tenendum eisdem burgensibus et probis hominibus et heredibus suis de nobis et heredibus nostris per eandem firmam quam nobis reddunt de villa Novi Castri supradicti imperpetuum cum omnibus ad terras et tenement. reddit.' et 'servic.' predict.' spectan.' ad uniend.' et includend.' dicte ville Novi Castri in augmentum emendacionem et securitatem ejusdem ville. Volumus etiam et concedimus pro nobis et heredibus nostris quod predicti burgenses et probi homines ejusdem villæ Novi Castri et eorum heredes habeant in predictis terris et tenementis de Pampeden liberum burgum sicut habent in predicta villa Novi Castri cum omnibus libertatibus et liberis consuetudinibus ad liberum burgum pertinen' et quod terræ et tenementa predict' de cetero sint libera burgagia et teneantur in liberum burgagium adeo libere et quiete sicut predicti burgenses et probi homines burgagia sua in predicta villa Novi Castri melius et liberius tenent. Et quod predicti burgenses et probi homines et eorum heredes et illi et eorum heredes qui terras et tene-

Ch. 27 Ed. 1.

menta predicta in Pampeden modo tenent et in posterum tenebunt habeant in omnibus et per omnia libertates et liberas consuetudines quas predicti burgenses et probi homines habent in predicta villa Novi Castri ex concessione progenitorum nostrorum regum Anglie et nostra et quod predicta villa Novi Castri et terra et tenementa predicta in Pampeden unica villa de cetero sint et unus burgus. Ita quod nullus vicecomes, coronator aut alius ballivus, seu minister noster forinsecus in predictis terris et tenementis in Pampeden in aliquibus ad dictam libertatem pertinen' de cetero se intromittant nisi in defectu burgensium et proborum hominum predict' vel ballivorum suorum et quod nullum carragium sive discarragium de rebus venalibus ibidem per naves venientibus vel abinde transeuntibus fiat in terris et tenementis in Pampeden predict.' sine unanimi assensu et voluntate predictorum burgensium et proborum hominum predict' ville Novi Castri. Et quod iidem homines et tenentes terrarum et tenementorum predict. in Pampeden et eorum heredes predictis burgensibus et probis hominibus ville Novi Castri et eorum heredibus et ballivis ejusdem ville sicut eorum comburgenses de cetero respondeant et intendant in omnibusque contingunt libertatem supradictam. Quare volumus et firmiter' precipimus pro nobis et heredibus nostris quod predicti burgenses et probi homines predictæ villæ Novi Castri et heredes sui habeant et teneant omnes terras et tenementa predict.' cum pertinen.' in

Pampeden in Byker una cum redditibus et servi- Ch. 27 Ed. 1.
ciis omnium tenentium nostrorum et heredum suorum cum suis pertinentiis de nobis et heredibus nostris per eandem firmam quam nobis reddunt de villa Novi Castri supradicta imperpetuum cum omnibus ad terras tenementa reddit.' et servicia predict.' spectan.' ad uniend.' et concludend.' dicte ville Novi Castri in augmentum emendacionem et securitatem eiusdem ville et quod habeant in predictis terris et tenementis in Pampeden liberum burgum sicut habent in predicta villa Novi Castri cum omnibus libertatibus et liberis consuetudinibus ad liberum burgum pertinen', et quod terr' et tenementa predict.' de cetero sint libera burgagia et teneantur in liberum burgagium adeo libere et quiete sicut predicti burgenses et probi homines burgagia sua in predicta villa Novi Castri melius et liberius tenent. Et quod predicti burgenses et probi homines et eorum heredes et illi et eorum heredes qui terras et tenementa predict' in Pampeden modo tenent et in posterum tenebant habeant in omnibus et per omnia omnes libertates et liberas consuetudines quas predicti burgenses et probi homines habent in predicta villa Novi Castri ex concessione progenitorum nostrorum regum Anglie et nostra et quod predicta villa Novi Castri et terr' et tenementa predict' in Pampeden unica villa de cetero sint et unus burgus ita quod nullos vicecomes coronator, &c. (ut supra). Hiis testibus, &c. &c."

Brand, v. 2, p. 146.

Ch. Ed. 2.

Edward II, by a charter dated 12th Nov. 1318, confirmed that of the 17th of John, and also granted the burgesses freedom from toll, &c. and that they should be tried by their fellow burgesses only, except in cases which concerned the king or the community of the town, together with other civic grants and regulations.

Charters of Ed. 3.

Edward III. granted charters of confirmation in the years 1330–32–33; and by another charter, granted in 1332, with the assent of his prelates, barons, and others assembled in parliament, confirmed the mayor in the office of escheator for the town and liberties thereof.

Mayor escheator, &c.

Brand, v. 2, p. 161.

The king, having taken the town of Newcastle into his own hands, by charter dated 24th October 1345, regranted it to the burgesses, and regulated the future elections of the mayor.

November 4th, 1345, Newcastle was again seized by the king for new transgressions, and committed to the charge of Henry de Percy, and others, and Robert de Fenwick, sheriff of Northumberland; but in the course of the same year was restored to the burgesses.

Castlefield, &c. granted to the burgesses.

May 10th, 1358, the king granted the royalty of Castlefield and Castlemoor to the burgesses who before had the property of the soil; and in 1364, the royal licence was likewise granted for the acquisition of other lands.

Ch. 48 Ed. 3.

July 28th, 1375, a charter of exemplification was granted; and in 1377 an inquisition concern-

ing the bounds of Castlefield, and the right to the soil, was exemplified. Ch. 1 Hen. 4.

Hen. IV, by charter bearing date April 27th, 1400, confirmed all former charters; and by a second, dated May 4th, in the same year, made Newcastle a county of itself, in the following terms:— Ch. 27 April, 1 Hen. 4. Brand, v. 2, 168.

"Henricus, &c. Sciatis quod de gratia nostra speciali in melioracionem succursum et relavamen ville nostre Novi Castri super Tynam ac burgensium nostrorum ejusdem ville heredum et successorum suorum concessimus eisdem burgensibus ac eorum heredibus et successoribus imperpetuum quod dicta villa cum suburbiis suis et precinctu eorundem juxta fines et bundas prout antiquitus debite limitabantur que modo infra corpus comitatus Northumbriæ existunt, et continentur ab eodem comitatu ex nunc separata sint et exempta tam per terram quam per aquam et quod dicta villa et suburbia ejusdem et eorum precinctus de cetero sint comitatus per se et comitatus villæ Novi Castri super Tynam nuncupatur in perpetuum (a). Et quod predicti burgenses et eorum

Ch. May 4, 1 Hen. 4. Newcastle a county of itself.

(a) In 1809 an act passed "to enable his Majesty to grant the moot-hall, grand jury room, and certain grounds and buildings adjoining thereto in the Castle Garth, within the site of the old castle of Newcastle-upon-Tyne, to the justices of the peace for the county of Northumberland, for building courts of justice, and also a gaol for the said county," and for other purposes, which contains the following section: 49 Geo. 3, c. cliii.

Ch. 1 Hen. 4.

Brand, v. 2, p. 169.

Sheriffs instead of bailiffs.

With the same power as other sheriffs.

County court.

Not to be impleaded out of the town.

Cognizance of pleas.

Juries.

heredes et successores in perpetuum habeant infra villam suburbia et precinctum predicta franchesias privilegia et libertates subscriptas et iis et eorum quolibet de cetero plene gaudeant et utantur;" viz. that the burgesses, instead of bailiffs as formerly, should have a sheriff, to be chosen annually, who should take the oaths before the mayor, and who should return his name to the Chancery, &c. and which sheriff should account to the Exchequer, and have the same power as other sheriffs of counties, and who is directed to hold a county court on one Wednesday in every month. It further granted that none of the burgesses should plead or be impleaded without the town concerning matters arising within the same; and that the mayor and sheriff should have cognizance of all pleas. That the burgesses should be exempt

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Sec. x.

"And be it further enacted, That all and every the said moot-hall, shire-hall, court-houses, grand jury room, offices, gaol and buildings, so to be provided and erected as aforesaid, and also such open space of ground as shall or may be laid out and attached thereto as a court yard, and bounded as before-mentioned, shall, from and immediately after the same shall be so erected and laid out respectively, be, and be deemed to be, within and parcel of the said county of Northumberland to all intents and purposes whatsoever, and that all and every other part and parts of the said Castle Garth, and site of the said old castle of Newcastle-upon-Tyne, shall from thenceforth be deemed and taken to be within and parcel of the town and county of the town of Newcastle-upon-Tyne, to all intents and purposes whatsoever, any law, usage, custom or grant whatsoever to the contrary in anywise notwithstanding."

from serving on juries without the town; and that they should have the power of choosing six aldermen, who, together with the mayor, should be justices of the peace within the said town, to the exclusion of the justices of Northumberland; and lastly, that the mayor and sheriff should have power to hold the same courts, as had formerly been held by the mayor and bailiffs.

Ch. 1 Hen. 4.

Six aldermen, &c.

Justices of the peace, &c.

In 1441, Hen. VI. confirmed the charters and liberties of Newcastle; and on the 11th of July 1444, granted to the mayor and burgesses, their heirs and successors, that the town should be free from the jurisdiction of the constable, marshal and admiral of England, and from that of the warden of the Marches; and that all process should be served by their own officers (*b*).

Ch. 19 Hen. 6.

Ch. 21 Hen. 6.

Charters of confirmation were likewise granted by Ed. IV. in 1466; R. III, in 1483; and Hen. VII. in 1485.

Ch. Ed. 4, R. 3, and Hen. 7.

May 6th, 1510, Hen. VIII. granted an exemplification of divers charters; as did Edward VI. April 10th, 1548.

Ch. Hen. 8, and Ed. 6.

In the 3d Ed. VI. a private act of parliament passed to annex the ballast shores and part of Byker to the town and county of Newcastle.

1554, Queen Mary granted a charter of confirmation to the burgesses of Newcastle;

Ch. 1 Mary.

(*b*) In 1446 two inquisitions were held concerning divers rights belonging to the town of Newcastle, the one found by a jury of Northumberland, the other by a jury of that town. Brand, v. 2, p. 176, who refers to the Aubone MS.

Ch. 3d & 4th. Ph. and Mary.

Aldermen, &c.

Justices of the peace, &c.

and in the 3d and 4th Philip and Mary, divers privileges were granted by charter to the mayor, aldermen and burgesses, and by which four were added to the number of aldermen, who were also made justices of the peace.

Ch. 3 Eliz.

1561, Queen Eliz. by charter, exemplified and confirmed divers grants to the burgesses; and

Ch. 31 Eliz.

by another, granted 30th August 1589, incorporated the burgesses by the name of the 'Mayor and burgesses of the town of Newcastle-upon-Tyne, in the county of the same.' This charter also confirmed their former liberties; gave them power to make perambulations, and the same authority and liberty in the castle (which was still parcel of the county of Northumberland) as in the other parts of the town; also exempted them from the jurisdiction of the admiralty, &c. &c. Eliz. also granted a third charter, dated 22d March

Brand, v. 2, p. 184.

Ch. 42 Eliz.

1600, which, reciting that Newcastle was an ancient town and county of itself, confirmed former privileges, and regulated the elections of the corporate officers, &c. and the administration of justice in the town, &c. and other civic and mercantile affairs.

Ch. 2 Jac. 1.

31st March 1604, Jac. I. granted a charter to Newcastle, making several regulations respecting corporate matters, and the administration of justice.

Quo warranto, 1629. Brand, v. 2, p. 193.

In 1629, a *quo warranto* was brought against the mayor and burgesses, calling upon them to show by what authority they claimed to be incor-

porated by that name, &c. which was determined in favour of the corporation. Quo warranto, 1629.

Feb. 3d, 1664, Ch. II. granted a charter to Newcastle, inspecting and confirming the charter of 42d Eliz. and 2d Jac. I, together with their ancient privileges. Ch. 16 Car. 2.

In 1689, an act of parliament passed for erecting a court of conscience at Newcastle, throughout which Newcastle is described and treated as a town and county of itself. Stat. 1 W. & M. c. 17.

The lord lieutenant for Northumberland is also appointed for the town and county of Newcastle. Lord lieutenant.

The mayor and aldermen are the justices of the peace for the town and county of Newcastle. Justices of the peace.

The governing body of the corporation consists of a mayor, ten aldermen, a sheriff, and twenty-four common councilmen. There are likewise two coroners, a town clerk, and other officers. Municipal government.

The sheriff of Newcastle is the returning officer. Returning officer.

The right of election of members to serve in parliament is in the free burgesses at large, who acquire their freedom either by descent or servitude; all the sons of a burgess are entitled to the franchise of their father. The number of free burgesses is supposed to be about 3,000. Right of election.

Freeholds situate within the county of the town of Newcastle do not confer votes for the county of Northumberland.

Newcastle, as we have seen, was made a county

Returns.

of itself by Hen. IV, and returned members to parliament as early as Ed. I.

The early returns were made by the bailiff to the sheriff of the county of Northumberland, and by him returned; but in the 25th Hen. VI, the return was made by the sheriff of the county of Newcastle, as follows:

Prynne Brev. Parl. Reg. 165.

"Hæc indentura facta inter Johannem Ward vicecomitem ville Novi Castri super Tinam ex una parte et Rogerum Thornton, armigerum, (and thirty-four others by name,) *probos homines* ville predicte qui proclamationi facte unde in brevi hinc indenture consut.' fit mentio interfuerunt auctoritate ejusdem brevis eligerunt duos burgenses de discretioribus et magis sufficientibus burgensibus ville predicte libere et indifferenter juxta formam statuti domini regis in eodem brevi specificat. viz. Willielmum Harding et Thomam Morrislawe burgenses in eodem villa residentes ad interessendum ad parliamentum predict'. pro communitate ejusdem ville ad faciend. et consentiend.' eis que in eodem parliamento, Deo favente, contigerit ordinari in omnibus et per omnia secundum formam et effectum predicti brevis. In cujus rei testimonium partibus hujus indentura tam predict.' vic.' quam prefat.' electores sigilla sua apposuerunt. Dat.' in pleno com.' ville predicte primo die Februar.' anno regni regis Henrici Sexti post conquestum Anglie vicesimo quinto."

COUNTY OF THE CITY OF NORWICH.

Norwich first became a place of importance on the desertion of Caister by the Romans. During the time of the Saxons and Danes it increased in consequence; and about the year 975, the town was forfeited and a castle built, which, in 642, became a royal castle, and one of the seats of the kings of the East Angles. Blomefield's Hist. Norfolk, p. 3.

In 1017, Canute assigned all Norfolk to earl Turkil, and committed Norwich to his custody: he is also supposed to have built the present castle.

Edward the Confessor gave this earldom to Harold, and subsequently to Algar, son of Leofric, earl of Chester; but at the time of the general survey, recorded in Domesday-book, it had reverted into the hands of the crown, at which period Norwich was a hundred of itself, containing 883 acres of land, with a population of 2,320 burgesses.

William the First, in 1075, gave the earldom, city and castle to Ralph de Waivet, who subsequently rebelling, the castle, city and lands reverted to the crown. The Conqueror then

Early history.

Blomefield, p. 11.

made Roger Bigod constable of the castle, likewise his bailiff to collect the rents "from the borough of the castle, city and earldom;" and in the survey taken in 1085, the hundred of Norwich is stated to be the king's land.

During the reign of William Rufus, Norwich continued to be held under the crown by Roger Bigod, at whose request, in 1094, the bishop's see was removed there from Bury, the first stone of the cathedral being laid in 1096. Roger Bigod was succeeded by his son William in the offices of constable of the castle and governor of the city.

Cathedral founded.

Ch. Hen. 1.

In 1122, Hen. I. kept his Christmas at Norwich, on which occasion he granted by charter to the citizens, "the same franchises and liberties as the city of London then had; from which period they were governed by a præpositus, provost or portreeve, who was to collect all the king's duties, and govern the city; and this was the first grant or charter the city had, by which the government of it was severed from the castle, the constable of which till now was always sole governor, and answered to the king his two parts of the profits, and kept the third to himself, and the sheriff who was then under him was the officer that collected it; but now the third part of the profits remained to the castle, and was the king's liberty belonging to the castle, which belonged to the constable thereof, who governed by the sheriff; and the

Government of the city severed from that of the castle.

king's two parts became the citizens, who by this charter exercised all jurisdictions that the king did in reference to those parts, and returned their fee-farm or annual profits by the hands of the provost, who accounted yearly for them to the king. Whether this officer was recommended by the citizens to the king, which is most likely, it being annual, or whether the king named without any such recommendation, I cannot find, neither have I met with any copy of this charter, though the truth of it is confirmed not only from many evidences, but also by the charter of Hen. II, which mentions it." Ch. Hen i. Blomefield, p. 16.

On the accession of Stephen the citizens applied for a new charter, also to be governed by coroners and bailiffs instead of their provost or portreeve, but were refused; and on Hugh Bigod holding the castle against William de Blois, the king's natural son, he seized the castle and all that belonged to it, and all the liberties of the city from the citizens, and took them into his own hands. At this time "the town and borough of the city of Norwich" contained 1,238 burgesses, who held of the king by burgage tenure, and the castle and burgh thereof 123 burgesses, holding by like tenure, both of which Stephen granted to William de Blois; the fee-farm rent of the whole being 700*l.* per annum. Norwich granted by king Stephen to William de Blois.

In 1138, the citizens again applied to the king for a regrant of their liberties, whereupon they were reinstated in their ancient privileges.

Liberties seized by Stephen.

On the revolt of Hugh Bigod in 1141, the king again seized their liberties, but restored them in 1152.

Liberties resumed by Hen. 2, and the city governed by a sheriff.

Hen. II. resumed the city, castle and liberties, and governed the city by a sheriff, who paid the profits and aids accruing therefrom into the Exchequer: but in 1163 Hugh Bigod was again made constable of the castle, "and the city being in the king's hands, he became sole governor of it, the sheriff from that time acting under him as to the city."

Blomefield, 21.

Ch. Hen. 2.

In 1182 the citizens petitioned to have their former liberties and franchises restored, to which the king consented, granting them the same liberties as they had enjoyed in the time of Hen. I. and Stephen.

Ch. R. 1.

When Rich. I. went to the Holy Wars, the citizens of Norwich presented him with a large sum of money, in consideration of which he granted them numerous privileges, and, amongst others, that they should be governed by two bailiffs, to be chosen among themselves every year.

Bailiffs.

Ch. 4 R. 1.

Rich. I. likewise granted them another charter, dated 5th May 1193, by which the citizens were exempted from being impleaded out of the city courts for matters arising within the city, and also enabled to try all pleas, &c. amongst themselves, according to the custom of London: all strangers were forbid to dwell or take any thing by force within the city: also freedom from toll and

Exempted from being impleaded out of the city, &c.

Freedom from toll, &c.

age throughout England was thereby granted to the citizens: it likewise provided for the mode of holding and proceeding in their courts: also confirmed and added "all other liberties and free customs which our citizens of London have had or now have, or others, if ever they had any better or more free, according to the liberties of London, and the laws and customs of the city of Norwich, to hold of the king, paying yearly, on Midsummer-day, 108 *l.* at the Exchequer, by tale, for the city of Norwich, by the hands of the provost of Norwich, with liberty to the citizens to choose yearly, out of their own body, such provost as shall be agreeable to us and them."

Confirmation of privileges similar to those of London.

Blomefield, p. 27.

King John, by a charter bearing date 22d September 1199, in consideration of 300 marks paid to him by the citizens, confirmed all their former liberties, in similar terms to those contained in the charter of Rich. I.

Ch. 1 John.

In 1223 the government of the city was changed by Hen. III, at the suit of the citizens, from a provost to four bailiffs.

Ch. 7 Hen. 3.

In 1228 the citizens petitioned for a new charter, with a confirmation of all former charters, and a grant of some additional privileges, which were conferred in nearly the same terms as those used in the charters of R. I. and John, and by which they obtained the power of trying all writs of novel disseisin, &c.

Ch. 12 Hen. 3.

By a third charter, dated 1255, the same thing granted to the citizens of Norwich free-

Ch. 29 Hen. 3.

Ch. 40 Hen. 3.

dom from arrests; and on the 25th of March 1256, a fourth, whereby he gave them the return of all writs relating to the city and liberty of Norwich, and directed that the citizens should answer their debts at the exchequer by their own hands, excluding all sheriffs and bailiffs from entering the city to take distress for debt, &c. unless in default of their own officers: exempted them from pleading out of the city for offences committed therein; and ordered that all merchants trading there should pay scot and lot; and that no guild or fraternity of merchants should be held within the city to the damage of the same.

Return of writs.

Exemption from pleading out of the city, &c.

All merchants to pay scot and lot.

Blomefield, p. 87.

Liberties seized.

Certain disturbances taking place in the city in 1267, the king seized the same, and kept it in his own hands.

City interdicted, &c.

In 1272 violent outrages having been committed by the citizens towards the monks, the city was interdicted, and the king seized "all the city, and all the liberties that ever were granted to it, and assigned custodes or keepers to keep the city in his own name."

Ib. 40 and 44.

Disputes referred to the Pope, and the interdiction removed.

In 1274 the matters in dispute between the citizens and the monks were referred to the Pope, and the city complying with the prescribed terms, in 1275 the interdict was taken off, and the king restored the citizens to their liberties, paying an addition of 40*s.* to their former fee-farm rent.

Liberties seised and restored.

In consequence of misconduct their liberties were again seized by the crown in 1281 and 84,

but in both instances speedily restored: also, in 1289, seized for non-payment of the fee-farm rent, but again restored upon submission being made, and payment of the arrears.

Liberties restored.

In the same year the king granted a charter to the citizens, directing, that for the future all assizes, sessions, and gaol deliveries (for the county of Norfolk), should be held "in domo nostra quæ vocatur shirehouse et quæ est in feodo castri nostri (*b*) civitatis predictæ et non alibi infra libertatem civitatis supradictæ;" but not to exclude the chancellor, treasurer, chief justice itinerant, or the steward or marshal of the household.

Ch. 17 Ed. 1. The assizes, &c. for the county of Norfolk to be held in the shirehouse.

Blomefield, p. 48.

"In 1302 Tombland and Ratton Rowe were determined to be out of the liberty of the city, and in the king's hundred of Blofield."

Tombland, &c. out of the city.

Ib. p. 49.

"The citizens petitioned the king in parliament, in 1304, to have a grant of the lete of Great Newgate, which he recovered against the prior, to hold at a certain rent; and were answered, that they should make application to

Citizens petition for the lete of Newgate.

(*b*) "The strong and noble castle of Norwich, called Blanchtower, invironed about with the city, *but no part thereof but of the county of Norfolk*, was not (as some suppose) built by Bigot earl of Norfolk, which some, upon view thereof, have conjectured, for that the arms of earl Bigot are graven on the walls thereof; for we find a charter of king Stephen in these words: Stephanus rex Anglorum archiepiscopis, &c. &c. salutem. Sciatis me dedisse in fœdo et hæreditate Willielmo comiti Warren filio meo castellum Norwici cum toto burgo, &c." 4th Inst. p. 257.

Ch. 22 Ed. 1.

the treasurer and barons of the exchequer, and if it was found to be for the king's profit they should have it; and it being found to be so, the king not only granted them the lete, but, for a fine paid, and an annual rent of 10*l.* added to their old fee-farm rent by way of increment or increase, he confirmed all their former charters, and granted them the following liberties and privileges, more than they had before, by a new charter, namely:

Not to be impleaded out of the city, &c.

Not to be impleaded without the city upon any pleas or plaints, &c. arising within the same: not to be convicted before any foreign officer of any offences or demands arising among themselves, but by their fellow citizens only.

or summoned on juries.

Not to be summoned on juries out of the city, or on any inquisitions respecting tenures within the same, unless the fact particularly concerned the king.

Freedom from toll, &c.

Freedom from toll, pontage, &c. throughout the kingdom.

City gaol, who to be confined in.

That all persons arrested within the city should be kept in the city gaol by the bailiffs, unless for offences against the forest laws.

Summonses to be made by the bailiffs.

That all summonses, &c. arising within the city should be made by the bailiffs.

No sheriff or coroner to act within the city but on default made by the bailiff.

That no sheriff, coroner, bailiff, &c. should execute any office within the city, unless on default of the bailiffs of the same.

Bailiffs to levy tailliages.

That the bailiffs of the city should assess and levy all tailliages, &c.

Gave liberty to them to hold the lete of Newgate at the yearly rent of 2*s.* and confirmed all former privileges. Dated 8th July, 33d Ed. I. Ch. 33 Ed. 1. Blomefield, p. 50.

In 1306 the bailiffs, citizens and commonalty, entered into a composition with the prior and convent of the cathedral church of the Holy Trinity, thereby settling their disputes and respective jurisdictions. Settlement of disputes between the bailiffs, &c. and the prior. Ib. p. 52.

And in 1326, by a charter of that date, Ed. II. inspected and confirmed all former charters, but did not confer any new privileges. Ch. 19 Ed. 2.

By a charter, dated 4th October 1338, Ed. III. also recited and confirmed all former charters without alteration or addition. Ch. 11 Ed. 3. Ib. p. 61.

In the year 1344 the citizens applied through the queen to the king for a grant of all his royal jurisdictions belonging to the fee of his castle there; in consequence of which, the next year commissioners were appointed, before whom a writ of *ad quod damnum* was executed, concerning the fee of the castle of Norwich, to ascertain whether it belonged to the crown or the earls of Norfolk, when it was adjudged to belong to the king, and that the earls only held as his constables; upon which the castle was confirmed to the sheriff of Norfolk to keep the king's prisoners in, and as such continues (*c*) annexed to the county of Application made by the citizens for the jurisdiction of the castle, &c.

(*c*) The castle of Norwich, with the common gaol, castle hill, and circumjacent grounds, containing about six acres, are vested in the justices of the peace for the county of Norfolk, by an act passed 46th G. III. c. 86.

Ch. 17 Ed. 3.

Norfolk for a county gaol. The return also stated, that the jurisdiction belonging to it might be granted to the city without damage to the crown, except the loss of 12 *d.* arising from the pleas of that jurisdiction; and the king being also informed, that the inhabitants of the castle ditches being in the fee of the castle, were not taxable with the city, but exempt from the bailiffs of the city, and out of the city jurisdiction, and that often, when citizens were indicted of felony, they took refuge there to avoid justice, being screened by the sheriff of the county, he granted a charter to the citizens, giving them the jurisdiction of all places inhabited about the ditches of the castle, and which were of the fee of the castle, and that those places should be "of the same nature and condition as other places and tenements of the said citizens, in the said city aforesaid, (the house called the shirehouse (*d*), where the com-

Gives the citizens jurisdiction about the castle ditches, &c.

Blomefield, p. 66.

(*d*) The shirehouse has, at different times, been erected in different places, but always in the county of Norfolk. In 1747 the shirehouse was burnt down, and an act passed to permit the ensuing assizes, &c. to be held in the county of the city until it could be rebuilt, and which recites, that "Whereas the shirehouse of the county of Norfolk, late situate on the castle hill, in the said county, in which the summer assizes and general quarter sessions of the peace of and for the said county have been always holden, and other publick business of the said county transacted, hath, by accident, been lately burnt down: And whereas it is absolutely necessary that a new shirehouse should be erected there for the purposes aforesaid; but the same cannot be

mon pleas of the county are held, only excepted)," thereby giving to the citizens the same jurisdictions, with respect to those places, as they had before possessed over the rest of the city. Ch. 17 Ed. 3.

February 26th, 1378, Richard II. confirmed all former charters, and made some additional regulations respecting purveyors and forestallers. Ch. 1 R. 2.

In 1378 the citizens of Norwich petitioned parliament, requiring "that no stranger within their liberty may there sell or buy any merchandize by retail on pain of forfeiture. Answer: There is statute hereafter made, therefore which shall be kept; as follows: Petition of the citizens.

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rebuilt, completed and finished, against the next summer assizes to be holden for the said county of Norfolk, which will be in the year of our Lord one thousand seven hundred and forty-seven; and there is no place so convenient for the holding such summer assizes, and the general quarter sessions of the peace, and for transacting other publick business of the said county of Norfolk, as the city of Norwich, which lies in or near the centre of the said county; but the said city being a county of itself, distinct from the said county of Norfolk, the said assizes or sessions of the peace for the said county of Norfolk cannot, by any law now in being, be held within the said city and county of Norwich: And whereas the mayor, sheriffs, citizens and commonalty of the said city of Norwich, in common hall assembled, have consented to the holding of the said assizes and sessions within the city and county of Norwich aforesaid: Be it therefore enacted, &c." That the summer assizes and sessions of the peace for the county of Norfolk should be held at Norwich, &c. 20th G. II, c. 21.

Stat. 2 R. 2, c. 1.

"It is enacted for the citizens of Norwich, That if their customs and usages heretofore used, or hereafter to be used, be difficult or defective in part, or in all, or that the same need any due amendment for any new matter arising, whereof remedy was not before that time had, that then the bailiffs and twenty-four citizens of the same city, so therefore yearly to be chosen, or the greater part of them, shall from henceforth have power to ordain and provide, from time to time, such remedies which are most agreeable to faith and reason, and for the most profit of the good and peaceable government of the same town, and of strangers thereto repairing, as to them shall seem best, so as such ordinances be profitable for the king and his people."

Blomefield, p. 74. Cotton's Tower Records, p. 177; 4th Inst. p. 256.

Ch. 2 R. 2.

By a charter dated 15th February 1379, all former charters are recited and confirmed, together with the above mentioned additional privileges, which the citizens had just obtained from parliament.

Ch. 1 Hen. 4.

Hen. IV, in the 1st year of his reign, confirmed all former charters.

In 1402 considerable efforts appear to have been made by the citizens to obtain a new charter, in which they ultimately succeeded, as, on the 28th of January 1403, one (*e*) was granted, which reciting "that by reason of the great affec-

Ch. 4 Hen. 4.

(*e*) This charter is lost, but is recited in all the inspections since Hen. V.—Blomefield, p. 86.

tion that we have and bear to our city of Norwich, and the citizens and commonalty of the said city, and in consideration of the good behaviour of the citizens of the said city towards us, and of the voluntary service by them in time past often given us, being desirous to advantage the said city, and in a special manner to provide for the profit of those citizens, their heirs and successors, of our special grace we have granted,"[1] "That the city, and all the land within the city, and the liberty of the same within the suburbs, and their hamlets and their bounds, and all the land round the liberty thereof, (the old shirehouse only excepted), shall be and are hereby separated from the county of Norfolk, and be altogether exempt, both by land and water, and are hereby made a county of and by themselves, which shall be for ever called the county of the city of Norwich." By this charter the government by bailiffs was exchanged for that of a mayor, who was thenceforth to be the king's escheator in the city and liberties thereof, and who, together with two sheriffs for the county of the city, were to be elected annually by the citizens and commonalty. The mayor was also directed to take his oath as escheator within the city, and the sheriffs before the mayor in the guildhall, who was to return their names into chancery.

Ch. 4 Hen. 4.

A county by itself.

Blomefield, p. 88.

Instead of two bailiffs one mayor.

Two sheriffs.

It also excluded the escheator of Norfolk from the county of the city of Norwich, and authorised the sheriffs of Norwich to hold their

Escheator of Norfolk excluded.

Sheriffs to hold county courts.

Ch. 4 Hen. 4.

Citizens not to be impleaded out of the city.

Steward and marshal, &c. excluded.

Cognizance of pleas.

Deputy escheator.

Waste grounds, gates, &c.

Mayor to try causes.

Mayor justice of peace, and to choose others.

Cases of felony, how to be determined.

Fines, how to be appropriated.

Sword and mace.

county court on Mondays, with the same powers as other sheriffs: and also exempted the citizens from being impleaded out of the city. Excluded the steward and marshal of the household both in the presence and absence of the king; and gave cognizance of all pleas, &c. to the citizens and commonalty, which are directed to be heard and tried before the mayor and sheriffs, at the guildhall; and required the deputy escheator and sheriffs, deputed under the city seal, to account at the Exchequer for the profits, &c. Authorised the mayor, sheriffs, citizens and commonalty, to appropriate all gates, bridges and waste grounds, to enable them to repair the gates and walls; and empowered the mayor alone to try all causes wherein the sheriffs are charged with doing wrong; directing the mayor for the time being to act as a justice of peace, and yearly to choose four others to assist him in that office, to the exclusion of all justices of the county of Norfolk, or elsewhere within the limits of the city or the county thereof, either by land or water; but prohibiting the mayor from determining in cases of felony, without the king's special mandate; and giving all fines accruing by virtue of the office of justice of the peace to the citizens, &c.

The mayor and sheriffs were permitted to carry the sword given by the king before them, except in his presence; but the serjeants at mace were allowed to carry their maces, *within the city and county of the same*, not only in the presence of

the queen consort or mother, but also of the king himself,

Steward of the household, &c. excluded.

It forbid the steward, marshal, and clerk of the market of the king, to sit or exercise jurisdiction within the city or its county, or to force the citizens to answer them any where out of their liberty; and prohibited all purveyors from taking any victuals of the citizens without their consent, unless at the full price, for the king's own use, and on payment of the money down; and directed that the city coroners should continue to exercise their office as other coroners. It also provided that "no damage," &c. "should come to the city by reason of this alteration of the bailiffs to a mayor and sheriffs, but the mayor, sheriffs, citizens and commonalty, by this charter have, and may use and enjoy, as confirmed to them, all things, the same as the bailiffs, citizens and commonalty, their predecessors, had used and enjoyed before this alteration."

Purveyors excluded.

Coroners.

Reservation of privileges.

Agreement as to the election of burgesses for knights of the shire, &c.

In consequence of disputes between the commons and the mayor and his council respecting the election of the corporate officers, and other matters, an agreement or composition was entered into between them thereupon, dated the 14th of February 1412, in which, after reciting many corporate regulations, is the following entry: "The burgesses for knights of the shire shall be chosen by common assembly, and their names declared to the mayor, sheriffs, and their council, in 'pleyn shire', in the guildhall." This agreement

Blomefield, p. 95.

Ch. 5 Hen. 5.

not proving sufficient to settle the disputes amongst the citizens, Hen. V. ordered both parties to appear before him, and having heard them by their deputies, in the month of July 1417, settled their differences by granting them a fresh charter, whereby he confirmed all former charters, more particularly that of his father Hen. IV, and likewise added certain fresh articles to provide for the points in dispute, by regulating and defining the mode in which the elections of their corporate officers should be conducted for the future.

Liberties seized and restored.

Disputes still continuing amongst the citizens, their liberties were seized by the crown in 1437, and not restored till the year 1439.

In 1442 their liberties were again seized by the crown, and again regranted in 1447, the citizens pleading guilty, and submitting to a fine, which restoration was made by letters patent of confirmation, dated December 1st, in this year.

Let. Pat. 25 Hen. 6.

Ch. 30 H. 6.

Hen. VI, 17th of March 1452, confirmed all former charters, and added certain corporate privileges; also,

Ch. 1 Ed. 4.

Edward IV, in the 1st year of his reign, confirmed and inspected all former charters; and,

Ch. 18 H. 7.

7th March 1503, Hen. VII. granted a similar charter of confirmation.

Composition between the church and the city.

A (f) composition was entered into between

(f) Constant disputes and litigation appear to have existed between the church and the city respecting the extent and amount of their respective jurisdictions.

the prior and the city, dated 2d September 1524, by which the city "resigned all jurisdiction within the walls of the priory, and acknowledged it to be part of the county of Norfolk, in the hundred of Blofield; and the church all jurisdiction whatever without their walls, and within the walls of the city, to the said city." Composition, 1524. Blomefield, p. 140.

Hen. VIII, by a charter dated 7th June 1525, (and which was confirmed by authority of parliament,) recited and confirmed the above composition, at the same time adding certain corporate privileges. Ch. 16 H. 8.

"At this time also the king, by letters patent, dated at Westminster, the 6th of April, in the 30th year of his reign, confirmed by authority of parliament, sets forth, that by other letters patent, dated 28th of May, in the 19th year of his reign, he had made the precinct within the priory walls exempt from the city, as part of Blofield hundred in Norfolk, and that, by other letters patent, he had changed the prior and convent into a dean and chapter, and the monks into prebendaries and secular canons, and appointed William Castleton the first dean, and incorporated them, and given them every thing that belonged to the prior and convent, to have, use and enjoy, in the same manner the late prior and convent enjoyed them; and now the dean and chapter desiring to give up their letters patent of incorporation to the county of Norfolk, and hundred of Blofield, the king, by Let. Pat. 30 Hen. 8,

Let. Pat. 30 Hen. 8.

the mutual consent and good liking of the dean and chapter, and of the mayor court and commons of the city, accepted the surrender thereof, and, by these presents, the precinct was made part of the city and county thereof, and such liberties were to be used by the city in the precinct as were not contradictory to the ancient liberties of the prior and convent used in the same, all which liberties were reserved to the dean and chapter in as ample a manner as ever they were enjoyed by the prior and convent, and their predecessors."

Blomefield, p. 151.

Ch. 4 Ed. 6.

Ed. VI. granted a charter to the citizens of Norwich, dated November 12th, 1550, in which every prior charter is recited at length and confirmed, and by which a few corporate regulations are made.

Ch. 2d and 3d Ph. and Mary, setting out the bounds of the county of the city.

And in 1555, "at a congregation or assembly held the 13th of November, an aid proportionable to the rate of a whole tax was assessed and levied on the inhabitants of the city 'for the confirmation of the charter of the cittye, and the perambulation of the same,' which charter bears date the 3d of April following, at Greenwich, and was confirmed by authority of parliament, in which the limits and bounds of the city and county thereto belonging are fixed and determined." The following reservation of former privileges also is made: "The liberties of all persons within the said county, and the several towns and hamlets, and precincts thereof, belonging to

the several lords of the several manors, and owners of lands, &c. are reserved to them and their heirs, to be enjoyed in as ample a manner as before the making of this charter."

Ch. 2d and 3d Ph. and Mary.

Blomefield, 193.

In consequence of disputes between the sheriffs of Norfolk and Norwich concerning precedence whilst in attendance upon the judges in 1627, "it was decreed (g) by the said judges, that for ever hereafter the high sheriff only should attend the judges when they were about the county business, and the sheriffs of Norwich only, and not the high sheriff of Norfolk, should attend them when they go about the city business."

Order of proceedings between the judges and sheriffs.

Ib. 258.

In 1619, Jac. I, by letters patent, directed that the mayor should be chosen in the same manner as was observed at the election of mayors by the city of London.

Letters Pat. 16 Jac. 1.

26th June 1663, Car. II. granted a charter to the citizens of Norwich, which was subsequently avoided, but restored by the proclamation of Jac. II, in 1688, under which the city has been governed ever since, which, reciting that "whereas the city of Norwich is an ancient a city and county by itself, formerly d by the name of the mayor, sheri and commonalty of the city of Norw such

Ch. 15 Car. 2.

(g) The assize business follows the same order at present, as the judges first sit in the castle, (which always has remained part of the county of Norfolk,) attended by the county sheriff, for the dispatch of the Norfolk business, and subsequently at the guildhall, in the county of the city.

Ch. 15 Car. 2.

enjoyed many privileges and immunities," confirms all former liberties, &c. which had been granted to them as a body corporate, either by charters or letters patent, or which they had ever used and lawfully enjoyed, whether by grant, custom or prescription, or any other way, in as ample a manner as heretofore. This charter makes several provisions respecting the election of corporate officers, and other matters of a corporate and civic nature, but does not at all touch upon any topic connected with this inquiry, further than recognizing Norwich as a county of itself.

Municipal government.

The municipal government of Norwich consists of "a mayor, recorder, steward, two sheriffs, twenty-three aldermen, sixty common councilmen, and other officers."

Lord lieutenant.

The lord lieutenant of the county of Norfolk is also appointed for the county of the city of Norwich.

Justices of the peace, ante, p. 302.

The mayor and four others are justices of the peace for the county of the city.

Returning officers.

The sheriffs are the returning officers.

Right of election.

The right of election is, by a resolution of the House of Commons, dated 12th March 1701, declared to be in the freeholders, and such freemen only of the city as are entered in the books, and do not receive alms or charity.

Journals, v. 13, p. 790.

Freeholds situate within the county of the city of Norwich do not confer votes for the county of Norfolk.

Norwich first (*h*) sent members to parliament, 26th Ed. I.

Right of election.

We have already seen, by an agreement entered into between the commons and the mayor and his council, so early as the year 1412, (13 Hen. IV,) respecting the mode in which corporate and other elections should be made, that "the burgesses for knights of the shire shall be chosen by common assembly, and their names declared to the mayor, sheriffs, and their council, 'in pleyn shire,' in the guildhall." This is the first entry I have found respecting the election of representatives for Norwich; and it is worthy of attention, because the agreement being made only nine years after Norwich was made a county of itself, and six after the stat. of 7 Hen. IV, by which county elections were directed to be made "in full county," it is decisive, that at that period the change from a borough to a county was fully recognized, and treated as operating upon their elective franchises, because their representatives are therein described as "burgesses for knights of the shire;" and the mode of election demanded was consonant to that prescribed by the 7th of Hen. IV, it being required to be in "pleyn shire." The other part of the agreement, namely, that they should be chosen by common assembly, may raise a question as to

Agreement as to the election of the burgesses for knights of the shire.

Ante, p. 303.

(*h*) Carew, part 2, p. 25; and see the lists of members in Blomefield, p. 55.

Return, 25 Hen. 6.

who did vote in those times; but the explanation afforded by subsequent usage renders it most probable that both freemen and freeholders elected.

In the 25th Hen. VI. an indenture was returned, "inter Robertum Aleyn et Johannem Intewode, vic. civit. Norwic. ex una parte, et Thomam Grys, Johannem Colton coronatores domini regis in civit. præd. Thomam Catworth, custodem ejusdem civitatis, Thomam Ingeham, (and twenty-three others therein named,) cives civit. prædict. ex altera parte, testatur, quod facta proclamatione in pleno com. civit. prædict. tent. apud Norwicum in Gwyhalda ejusdem civit. die Lunæ prox. ante festum Purificationis Beatæ Mariæ Virginis, anno regni Henrici VI, 25to, juxta formam statut. inde edit. et provis. ac juxta tenorem cujusdam brevis domini regis præfat. vic. in hac parte direct. per assensum prædictorum coronatorum et aliorum prænominatorum, Johannes Gerrard, et Gregorius Draper, electi sunt," &c.

Carew, pt. 2, p. 25, c. 1.

In Blomefield's account of Norwich is the following passage, of the date of 1483, temp. Ed. V. "At this time, also, John Paston, esq. who was knighted the 4th Hen. VII, was presented with his freedom; and 'twas agreed, that if he came before Monday, and was sworn freeman, that *at the county court* there held for the county of the city, he should be chosen one of the burgesses in parliament for the city; upon which he personally appeared, and sware, that if he was discharged

p. 124.

from serving all offices, he would willingly contribute with them, as a citizen, to all burdens whatsoever; upon which he was admitted, but was not sent to parliament till 1st Hen. VII."

Petitions.

The first resolution of the House of Commons, on the right of voting at Norwich, bears date 12th March 1701, and was occasioned by a petition presented against the return of Mr. Clark and Mr. Davy, when "the first thing the committee proceeded to was the right of election;" and that not being controverted, the committee for settling it resolved, "that the right of electing citizens to serve in parliament for this city is in the freeholders, and such freemen only of the said city as are entered in the books, and do not receive alms or charity."

Petition, 1701.

Resolution.

Journals, 12 March 1701, vol. 13, p. 790.

The principal ground of complaint in this petition was the alleged misconduct of the sheriffs as returning officers; no questions arose upon the freeholders right.

In 1705 there was a double return, and cross petitions were the result. That of Mr. Blofield and Mr. Palgrave stated, that they were "both freemen and citizens," but that Mr. Bacon and Mr. Chambers were not, in consequence of which it was contended that they were ineligible. The point in dispute was, whether to be free, and a citizen, were necessary qualifications for the elected? The committee decided that these were not necessary qualifications, by

Petition, 1705.

Petition, 1705.

resolving that Mr. Bacon and Mr. Chambers were duly elected. In support of the alleged necessity of such qualifications, the petitioners relied on the usage of the city, and a bye-law made in 1640; likewise on the terms of the Queen's writ, and the statutes of 1 Hen. V, c. 1, and 23 Hen. VI, c. 15. For Mr. Bacon and Mr. Chambers it was contended, that the construction put upon these statutes by the other side, was one which general usage did not sanction, and that such qualifications could, by no means, be required for Norwich, which was a county as well as a city, of which the freeholders, in common with the freemen, were entitled to vote.

Journals, Nov. 2, 1705, vol. 15, p. 11.

It does not appear upon what grounds the committee came to their determination; and from the usage, in this respect, throughout the kingdom, it is equally probable it might not have been founded on the fact of Norwich being a county as well as a city, for which the freeholders possessed the concurrent right of voting with the citizens; but I have noticed it as an instance in which the effect of the charter of separation was brought under review.

Petition, 1787. 3 Luders Rep. 440.

A petition was presented in 1787, by Sir Thomas Beevor and certain electors of Norwich, against the return of Mr. Hobart, at the hearing of which the resolution of 1701 was read as the last resolution, and not controverted. Many

freeholders voted at that election, which gave rise to this petition, and their right to do so in conjunction with the freemen was not disputed, although the petitioners objected to the votes of twenty-four freeholders, as not duly assessed to the land-tax; to those of eleven as having a defective title; and to ten as minor canons, lay clerks, and vergers, and, as such, not possessing legal freeholds. The committee decided that this was a void election, and a petition was likewise the consequence of the next return; but on that occasion no point was raised upon the right of voting.

Petition, 1787.

2d Petition, 1787. 3 Luders Rep. 454.

In the third year of G. II, an act of parliament passed, intituled, "An Act for the better regulating elections in the city of Norwich, and for preserving the peace, good order, and government of the said city;" the preamble of which recites, "Whereas many unhappy controversies and dissentions have of late years arisen in the city of Norwich, at the election of citizens to serve in parliament; and also of mayors, sheriffs, aldermen, and common councilmen, of and for the said city, touching the legality and validity of the votes of many persons who, in such elections, have offered to vote: And whereas the time appointed by the charters of the said city is not sufficient to elect so great a number of common councilmen for each great ward, as are thereby yearly directed to be chosen, when such elections

Stat. 3 G. 2, c. 8, regulating elections, &c. in the city of Norwich.

Stat. 3 G. 2, c. 8.

happen to be controverted: And whereas differences and disputes have arisen between the mayor, sheriffs and aldermen, and the commons of the common council of the said city, in or concerning the making or passing of acts, orders, or ordinances, in common council, or assembly of the representative body of the said city, which have oftentimes obstructed the public business and concerns thereof: Now to the end that a stop might be put to all such controversies and discussions as aforesaid, touching the legality of voters, that the number of common councilmen may be yearly elected, and that the public business of the said city may not be obstructed; Be it enacted, &c. That from and after the 25th day of April 1730, every person, before he is permitted to poll *as a freeman* at any election of a citizen or citizens to serve for the said city of Norwich in parliament, shall take the oath herein first after mentioned, or, being one of the people called Quakers, solemnly affirm the effect thereof; that is to say:—You do swear that you are, and for twelve calendar months have been, admitted a freeman of the city of Norwich, and that you have not been before polled at this election."

Oath to be taken.

The other provisions of this act apply to the election of corporate officers only.

In the list of members of parliament for Norwich, during the reign of G. II, given by Blomefield, is the following entry:—"Horatio Walpole and

Blomefield, v. 2, p. 318, note §.

Observations.

Thomas Vere are chosen by the freeholders and freemen of the city and county of Norwich."

From the wording of the preamble of the 3d of G. II, as well as from the terms of the different clauses of enactment, it clearly appears that this statute was passed without any reference to the situation of Norwich as a county of itself, because it treats exclusively of the corporate and civic body, and principally relates to their corporate elections: it, however, should be observed, that it by no means treats the citizens as the sole electors, as it does not require the oath above recited to be taken by "every person who shall come to poll," as is the case with the act regulating the elections at Coventry; but, on the contrary, seems worded so as not to interfere with some other body who are not therein named, the words being, "every person before he is permitted to poll *as a freeman;*" which would imply the existence of another class of voters. Neither is there any ground for supposing that this act passed in ignorance of the freeholders right, as, from the earliest entries on the subject, it appears to have been recognized, and was confirmed without dispute, by the resolution before cited of 1701. That it was not considered in practice, as interfering with the freeholders claim, is clear, because, by the entry before mentioned respecting the election of Mr. Walpole and Mr. Vere, the election is expressly stated to have been made by

21 G. 3, c. 54, s. 7.

Observations.

the freeholders and freemen of the city and county of Norwich; and it further has been shown, that the resolution of 1701 was taken as the right of election in 1787, at which election many freeholders polled; and though some were objected to, still the objections were made, not to the right, but to the title of the persons claiming.

COUNTY OF THE TOWN OF NOTTINGHAM.

It appears, by Domesday-book, that Nottingham, or rather Snotingham, was at that time a borough of considerable extent; and, according to Dr. Deering, was a borough by prescription, and governed by a reeve, or bailiff. William the Conqueror gave this place and the forest to his bastard son, William Peverell, and changed its name from Snotingham to Nottingham (*a*).

Thoroton, in his history, mentions a charter of Hen. II, as the first granted to the burgesses of Nottingham, which confirmed certain free customs they had before enjoyed in the time of Hen. I. Ch. Hen. 2.

King John being possessed of the county of Nottingham before he came to the crown, granted to the burgesses of Nottingham a charter of privileges, as Earl of Mortayne; and subsequently, in the 1st year of his reign, a second charter, as king, to the same effect, by which he confirmed to them the privileges granted by Hen. II, and Ch. John.

(*a*) Throsby's Edition of Thoroton's History of Nottinghamshire, 1797, v. 2, p. 34; Deering's History of Nottingham, 1751, p. 103.

Ch. John.

enjoyed under Hen. I.; also, that they should have a guild merchant, and directed that the bailiff for the borough should pay the king's ferme at the Exchequer.

Ch. Hen. 3.

By a charter of Hen. III. the burgesses were enabled to have coroners of their own; and by a second charter he exempted the persons and goods of the burgesses from arrest, where they were not the principal debtors, and gave them the return of all Exchequer writs. Edward I. empowered them to elect a mayor and two bailiffs, and granted that the mayor should be escheator within the borough.

Ch. 39 Hen. 3.

Ch. Ed. 1.

Ch. 7 Ed. 2.

Ed. II, by charter dated at Westminster, 16th March 1313, recited and confirmed the charters of Hen. III. and Ed. I, and granted that the burgesses should neither plead nor be impleaded out of the borough, on account of lands or matters arising within the borough, but before the mayor and bailiffs thereof, except in such cases as concerned the king, or the commonalty of the said borough; also, that no sheriff, or other minister of the king, should enter to execute process, unless the bailiffs made default; also exemption from murage, &c.

Burgesses not to be impleaded out of the borough.

Process to be executed by the bailiffs.

Ch. 4 Ed. 3.

Ed. III. granted a charter in 1330, confirming former grants and privileges, which recited, that the town and liberties seized by the king's justices itinerant were restored: that the return of writs granted by Hen. III. was claimed and confirmed; also, that no sheriff, &c. should enter to execute

Liberties restored, &c. confirmation, &c.

process, unless in default of the bailiffs of the town. Ch. 4 Ed. 3.

This charter also recited an "inquisition taken and returned into Chancery, whereby it was found that the burgesses, time out of mind unto the time of King John's charter, and since, had a gaol in the town, for the custody of such as were taken therein, as belonging to the town, and granted them for ever the gaol and custody thereof." Inquisition as to the gaol. Grant thereof to the burgesses.

All these grants, &c. received further confirmation from a charter granted by Rich. II, dated Westminster, 8th April 1378. Ch. 1 R. 2.

Hen. V, by charter dated Westminster, 18th November 1413, confirmed all former grants and charters; and further confirmed and granted to the mayor, bailiffs and burgesses, that they should have cognizance of all pleas by the mayor and bailiffs of the said town, or whom they should depute, as well of lands, &c. as of trespasses, &c. within the liberty of the town, and also of pleas of assize, &c.; also, that they should have the chattels of felons, &c. and all fines for trespasses, &c. together with the return of all writs and summonses of the Exchequer, and attachments and execution of the same; also the benefit of all purprestures by land and water, and all the wastes within the bounds of the town, in support of the corporation thereof; also power to hear and determine, by the mayor and recorder, and four others whom the Ch. 1 Hen. 5. Cognizance of pleas, &c. Chattels of felons, &c. Return of writs. Purprestures, waste lands, &c. Justices of the peace.

Ch. 1 Hen. 5. mayor shall choose, all matters belonging to the office of justice of the peace, of labourers and artificers; and that the justices of the county hereafter should not intermeddle with the affairs of the town. That the mayor should not try felons without the king's mandate; and that no armed force should be raised within the town unless the mayor be joined in commission for that purpose; also, that the mayor, bailiffs and burgesses, should have all fines arising before the justices of the town, as is granted to Coventry, &c.

Trial of felons.

Ch. 27 Hen. 6. Next follows the charter of 27th Hen. VI, by which Nottingham was made a county by itself, which, reciting and confirming all the before-mentioned charters, proceeds as follows:

Confirmation of former privileges.

"Nos autem omnia et singula franchesias, libertates, privilegia, quietancias, immunitates, concessiones, confirmationes et restitutiones predictas, rata habentes et grata, ea pro nobis heredibus, et successoribus nostris quantum in nobis est acceptamus approbamus et ratificamus ac omnia et singula franchesias, libertates, privilegia, quietancias et immunitates predictæ dilectis nobis nunc majori ballivis et burgensibus ville predicte, heredibus et successoribus suis tenore presentium concedimus et confirmamus sicut carte predicte rationabiliter testantur et prout iidem major, ballivi et burgenses ejusdem ville Nottyngham vel predecessores sui unquam franchesiis, libertatibus, privilegiis, quietantiis et immunitatibus predictis uti

Ch. 27 Hen. 6.

Confirmation of privileges.

et gaudere debent, potuerunt seu debuerunt ipsique vel predecessores sui franchesiis libertatibus, privilegiis, quietantiis et immunitatibus illis unquam post confectionem cartarum predictarum rationabiliter uti et gaudere consueverunt potuerunt vel debuerunt licet dicti nunc major, ballivi et burgenses ejusdem villæ vel predecessores sui franchesiis, libertatibus, privilegiis, quietantiis et immunitatibus predictis seu eorum aliquo abusi vel non usi fuerint. Et ulterius de uberiori gratia nostra ex mero motu et certa scientia nostris concessimus et per presentes confirmamus pro nobis heredibus et successoribus nostris, nunc burgenses ejusdem ville Nottyngham que est et diu extitit villa sub certa forma corporata ac eorundem burgensium heredibus et successoribus burgensibus ipsius ville in perpetuum quod villa illa de majore et burgensibus ex nunc in perpetuum sit corporata et quod iidem major et burgenses et successores sui majores et burgenses ville illius sic corporata sint una communitas perpetua corporata in re et nomine per nomen majoris et burgensium ville Nottyngham, habeantque successionem perpetuum, et quod major et burgenses ville illius et successores sui predicti per idem nomen sint habiles et capaces in lege ad omni modo, placita, sectas, querelas et demandas, nec non actiones reales personales et mixtas quascumque per ipsos seu contra ipsos motas seu movendas in quibuscumque curiis nostris, heredum et successorum nostrorum aut aliquorum quorumcunque tam coram nobis

Incorporated

by the name of the mayor and burgesses of the town of Nottingham.

Ch. 27 Hen. 6.

heredibus vel successoribus nostris ubicunque fuerimus, et coram nobis heredibus successoribus nostris in cancellaria nostra heredum et successorum nostrorum quam coram quibuscunque justiciariis et judicibus spiritualibus et secularibus, prosequenda et dependenta et quod in eisdem placitare possint et placitari, respondere et responderi et quod major et burgenses ejusdem ville et successores sui per idem nomen terras tenementa, possessiones et hereditamenta quecunque adquirere possint tenere sibi et successoribus suis in perpetuum. *Et insuper* de abundantiori gratia nostra ex mero motu et certa scientia nostris concessimus pro nobis heredibus et successoribus nostris, predictis nunc majori et burgensibus ville illius et successoribus suis burgensibus ejusdem ville in perpetuum quod eadem villa Nottyngham ac precinctus ejusdem prout se extendunt vel utuntur qui infra corpus comitatus Nottyngham jam existunt et continentur ab eodem comitatu a quinto decimo die mensis Septembris proximo futuro separati, distincti, divisi, et in omnibus penitus exempti existant in perpetuum tam per terram quam per aquam, castro (*b*) nostro Nottyngham et messuagio nostro vocato le Kyngeshall in quo est gaola nostra (*c*) comitatuum Nottyngham et

Empowered to hold land.

Town of Nottingham, and the precinct thereof,

separated from the county of Nottingham,

except the castle and the Kingshall,

(*b*) The precinct of the castle, and the king's or county hall, are still parts of Nottinghamshire.

(*c*) The gaol of Nottingham continued to be the gaol of that county and of Derbyshire till 23d Hen. VIII, although the

Derby tantummodo exceptis. Et quod eadem villa Nottyngham et precinctus ejusdem prout se extendunt vel utuntur exceptis pre exceptis sint ab eodem de comitatus per se et non parcella dicti comitatus Nottyngham et quod eadem villa Nott. et precinctus ejusdem prout se extendunt vel utuntur exceptis pre exceptis comitatus ville Nottyngham per se in perpetuum nuncupentur teneantur et habeantur."

Ch: 27 Hen. 6.

and made the county of the town of Nottingham.

This charter further directed, that instead of two bailiffs, the burgesses should have two sheriffs; to be chosen yearly on Michaelmas-day, in the same manner as the bailiffs were accustomed to be chosen, and who are required to take the oaths, &c. before the mayor.

Sheriffs.

That the mayor should be the king's escheator within the town and precincts, to the exclusion of all others, and that the offices of escheator and sheriff should be enjoyed as fully as elsewhere.

Mayor to be escheator.

That all writs heretofore executed by the sheriffs of Nottinghamshire, or the bailiffs of the town, within the same, should hereafter be directed to the sheriffs of the town.

Writs to be directed to the sheriffs of Nottingham.

That the burgesses should have a court, wherein matters arising within the town and precincts should be heard, to be holden before the mayor and sheriffs, with power to determine pleas, &c.

Mayor and sheriffs to hold courts, &c.

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assizes for Derbyshire were held at Derby from 53d Hen. III. There was but one high sheriff for both counties till 10th Elizabeth.—Deering, 126.

Ch. 27 Hen. 6.

Mayor and sheriffs to account before the treasurer of the Exchequer.

Escheator to take the oaths before the coroners.

That the escheator should take the oath of office before the coroners, and his name be certified to the Exchequer.

Burgesses to have the fines, &c.

That the burgesses should have the chattels of felons, &c. and all fines, &c.

Elections of mayor and sheriffs.

'This charter then regulated the elections of the mayor and aldermen; and directed that the

Mayor and sheriffs justices of the peace.

mayor and aldermen should be justices of the peace within the liberties of the town, and excluded the king's steward and marshal of the household from all authority within the same.

Reservation of privileges to the escheator and sheriffs of the rights belonging to their respective offices.

"Volumus tamen quod quilibet predictorum escatorum et vicecomitum ville illius pro tempore existentium prout ad suum spectat. officium de omni eo infra eandem villam ac libertatem et precinctus ejusdem ville exceptis omni modis finibus exitibus et amerciamentis predictis coram justiciariis pacis infra eandem villam et precinctus ejusdem ville prout se extendunt vel utuntur exceptis pre exceptis ratione justiciariæ pacis ibidem factis seu faciendis, forisfactis seu forisfaciendis qualitercunque provenientibus et exceptis ceteris premissis, prefatis nunc burgensibus villa illius et successoribus suis per nos virtute presentium ut permittitur concessis, quod ad nos et heredes ac successores nostros de jure pertinere et de quo escatores et vicecomites nostri dicti comitatus Nottyngham seu eorum alter coram thesaurio et baronibus de saccario nostro heredum et succes-

Ch. 27 Hen. 6.

sorum nostrorum si presens carta nostra eisdem nunc burgensibus facta non existeret, computare deberent seu deberet coram eisdem thesaurio et baronibus computum suum per attornatos suos ut predictum est reddere teneantur ac nobis et prefatis heredibus ac successoribus nostris inde prout justum fuerit respondere teneantur, proviso semper quod predicti nunc major et burgenses dicte ville Nottyngham nec eorum successores ad aliqua, libertates, franchesias seu privilegia burgensibus ville illius seu ballivis et burgensibus ejusdem ville per antea quovis modo spectantia seu pertinentia licet eadem libertates franchesias seu privilegia aut eorum aliquod per presentes dictis nunc burgensibus ville illius et successoribus suis concedantur vel concedatur quoquomodo clamandi et habendi in jure et titulo suis per antea pertinentibus seu spectantibus aliquo modo per acceptationem presentium excludantur, barrentur aut estoppentur, sed quod bene licet dictis nunc majori et burgensibus ejusdem ville et successoribus suis omnia et singula hujusmodi libertates franchesias et privilegia burgensibus ville illius aut ballivis et burgensibus ville illius per antea pertinentia vel de jure pertinere debentia in jure et titulo suis, sibi inde ante datum presentium pertinentia vel spectantia clamare, gaudere et habere aliqua concessione de aliquo eorundem libertatum franchesiarum seu privilegiorum in presentibus factorum seu acceptatione presentium per eosdem majorem et burgenses

Mayor and burgesses of Nottingham, and their successors, not to be excluded by this charter from any privilege heretofore enjoyed.

Ch. 27 Hen. 6. vel successores suos non obstante. *Quare volumus* et firmiter precipimus pro nobis heredibus et successoribus nostris predictis, quod prefati burgenses villæ nostræ predictæ ac eorum heredes et successores omnia et singula hujusmodi cognitionès, franchesias, libertates et immunitates ac omnia alia premissa prout superius specialiter expressantur, habeant, teneant et exerceant, ac eis et eorum singulis plene, libere, integre, pacifice et quiete in perpetuum gaudeant et utantur absque impedimento perturbatione molestatione seu impedimento nostri heredum vel successorum nostrorum aut aliquorum officiariorum seu ministrorum nostrorum heredum vel successorum nostrorum quorumcunque sicut predictum est modo et forma superius declaratis, aliquo dono sive concessione per nos aut per aliquem progenitorum nostrorum burgensibus ejusdem ville Nottyngham vel predecessoribus suis ante hæc tempora factis et quod inde seu de valore catallorum, amerciamentorum, exituum finiam, seu ceterorum premissorum expressa mentio facta non existit, non obstante (*d*)." In cujus, &c."

Deering, 103. This charter has been confirmed, without alteration, by Ed. IV, Hen. VII, Hen. VIII, Ed. VI, Philip and Mary, and Jac. I. Nottingham, in common with other towns, was subject to the usur-

(*d*) These extracts are taken from a copy of this charter given by Dr. Deering in the Appendix to his work, and verified by the deputy keeper of the records in the Tower.

pation of Car. II. and Jac. II.: it also received from William and Mary a charter of confirmation similar to that of Hen. VI, by which "the burgesses had their ancient form of government, rights, privileges and immunities restored to them."

Ch. W. & M.

Deering, 106.

The assizes and sessions for the county of Nottingham, and the elections of the knights and coroners for the county, are held at the king's or shirehall, which is part of Nottinghamshire, whilst those for the county of the town are taken at the guildhall.

The assizes, &c. where held.

The castle, county hall and gaol, have remained part of Nottinghamshire, having been excepted from the county of the town by the charter of Hen. VI.; also Standard Hill and Brewhouse Yard, which contain between two and three hundred inhabitants, are within the precinct of the castle, and consequently in Nottinghamshire.

The municipal government of Nottingham is in the mayor and six aldermen, who are the magistrates for the town and county, and hold the town and quarter sessions. The mayor, aldermen, two chamberlains of the year, eighteen senior council and six junior council, constitute the common hall, and have the control and disposal of the corporation estates. The mayor, six aldermen, two coroners, two sheriffs, two chamberlains, the senior and junior council, and all those who have served the office of chamberlain, constitute the body corporate.

Municipal government.

Justices of the peace.

Lord lieutenant.

The lord lieutenant for Nottinghamshire is also appointed for the county of the town of Nottingham.

Returning officer.

The sheriffs are the returning officers.

Right of election.

There is only one resolution on the right of election, by which it was agreed to be in the mayor, freemen, and freeholders (*e*) of forty shillings per annum. It was also agreed, that the eldest sons of freemen by their birth, the youngest sons of freemen who have served seven years apprenticeship, whether in Nottingham or elsewhere, and also persons who have served seven years apprenticeship to any freeman of Nottingham, were well entitled to demand their freedom.

Journals, June 10, 1701, v. 13, p. 611.

Nottingham has returned members to parliament since 26th Ed. I.

Freeholds situate within the county of the town of Nottingham do not confer votes for the county of Nottingham.

Petition, 1803. 1 Peckwell, 77.

On the 15th of February 1803, the petition of Mr. Coke, and certain electors of Nottingham, against the return of Mr. Birch, was heard, but on this occasion no question affecting the elective franchise was raised, the ground of complaint being confined to the conduct of the returning

(*e*) On this occasion the vote of one freeholder was objected to, and afterwards admitted, but it was the title to his freehold, and not his right to vote as a freeholder, which was disputed.

officers, and the riots which ensued; but the proceedings which took place at this election induced the committee to recommend that a bill should be brought in to give the justices of the county of Nottingham concurrent jurisdiction with the town justices within the county of the town.

Petition, 1803.

In consequence of this recommendation, an act passed, intituled, "An Act for the more effectually preserving the peace, and securing the freedom of election, in the town of Nottingham, and county of the said town:" which fully recognizes the town as a distinct county, as follows:

43 Geo. 3, c. 45. Empowering justices of the county to act as justices of the county of the town of Nottingham.

"Whereas of late years many riots and disturbances of the publick peace have taken place within the town and county of the town of Nottingham; and at the late election of members to serve in parliament for the said town and county, the freedom of such election was, by great riots and disturbances, grossly violated, and a great number of electors were deterred from exercising their franchise by voting at such election: And whereas the said town and county of the said town were formerly part of the county of Nottingham, but have been separated and made distinct therefrom, and exempted from the jurisdiction of the magistrates of the said county of Nottingham; and the mayor and aldermen of the said town of Nottingham are justices of the peace in and for the said town and the county of the said town: And whereas the said distinct and exclusive jurisdiction has been found ineffectual for preserving the peace and securing

43 Geo. 3.

the freedom of election within the said town and county of the said town: May it therefore please your majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent, &c. That from and after the passing of this act, it shall and may be lawful to and for the justices of the peace in and for the county of Nottingham for the time being, and they are hereby required, to act as justices of the peace in and for the said town and county of the said town of Nottingham, and such justices of the peace in and for the said county of Nottingham are hereby authorized and empowered to act as justices of the peace in and for the said town and county of the town of Nottingham in as full and ample manner as they could or might have done if the said town and county of the said town had not been made a distinct county, but had continued to all intents and purposes part of the said county of Nottingham, and as fully and amply to all intents and purposes whatever as the mayor and aldermen of the said town and county of the town of Nottingham, or any or either of them, as justices of the peace before the passing of this act, have used and exercised within the said town and county of the said town, or any part thereof, any charter, law, custom or usage to the contrary notwithstanding," &c. &c. "requiring all persons to obey," &c. &c.

Petition, 1819. Corbett and Daniell's Repts. p. 197.

The election of lord Rancliffe in 1818, gave rise to a petition against his return, which was

heard on the 9th of March 1819. This case was decided by the objections which were taken to the form of the petition; but as the objection, as well as one of the incidental points upon which the committee decided, have some reference to the subject of the present inquiry, they will be shortly noticed.

Petition, 1819.

The petition stated, that the petitioners were "electors and persons having a right to vote, &c. who did vote at the last election of members to serve for the *said town and county* in this present parliament," and "that at the last election of members, &c. *for the town and county of the town of Nottingham*," &c.; whereas the writ and the return stated the election to be for the town of Nottingham; and upon this variance two objections were raised.

First, that it did not appear by the petition that the petitioners were persons having a right to vote for Nottingham; and,

Secondly, that the petition stated the election was for *the town and county of the town* of Nottingham; whereas it ought to have been for the *town* of Nottingham only.

"The committee determined that the petition was not conformable to the provisions of the 28th Geo. III, c. 52, s. 1, and that the petitioners should not be allowed to proceed."

Lists when to be delivered, under 53 G. 3.

The manner in which the petition was framed led the agents for the sitting member to conceive that a question might arise, whether this would

Petition, 1819. be considered as a petition relating to an election for a county or for a town, and therefore, in pursuance of the provisions of 53d G. III, c. 71, delivered in to the clerk of the House of Commons a list of objections intended to be taken on behalf of the sitting member, ten days before the day appointed for taking the petition into consideration, (being the period at which lists are by that statute required to be delivered in petitions against county elections), and on the 3d of March, six days before the day appointed for considering the petition, delivered in another list, containing objections to other votes.

For the petitioners it was objected, that this was a county election, and consequently that no use could be made of the second list of objected votes, it not having been delivered in ten days before the day appointed for taking the petition into consideration.

To this it was answered, that it was a borough election, and therefore that the list, having been delivered in six days before the consideration of the petition, was in due time.

The committee determined that the list was delivered in due time.

Petition, 1820. On (*f*) the 21st of June 1820, a committee

(*f*) This report is taken from the minutes of the proceedings of the committee, the votes of the House, and a MS. note of my own; but I unfortunately was not in the committee room when the point was argued on behalf of the sitting member, and was unable to obtain a note of that part of the argument.

Petition, 1820.

sat to try the merits of a petition presented against the return of Mr. Birch and Mr. Denman, which set forth the writ directed to the sheriffs of the town of Nottingham, commanding "that proclamation being made of the day and place aforesaid in the next county court of the said town, to be holden after the receipt of this our writ, two burgesses of the most sufficient and discreet of the town aforesaid, freely and indifferently, by those who at such proclamation shall be there present, according to the form of the statutes in such case made and provided, ye cause to be elected," &c. together with the return thereto made by the sheriffs of the aforesaid gentlemen, as burgesses of the said town, purporting to have been made by certain persons therein named, being freeholders and burgesses of the said town, and stated "that the freeholders having a right to elect members to parliament for the said town and county, were freeholders of the said town and county, and not of the said town only; and that the burgesses elected to serve in parliament ought to be elected for the said town and county, and not for the said town only; and that the county courts, by the law of the land, and by the charters and customs of the said town and county of the said town, must and ought to be holden from month to month only; and that no county court for the said town and county could, by law, be holden on the 6th day of March last; and that the county court immediately preceding

Petition, 1820.

the said 6th day of March was holden on the 1st day of the same month of March, and that the next county court was by law to be held, and was holden, on the 29th day of the same month of March; and that no special county court could, by any law or statute in being, be holden for the said town, or for the county of the said town, or for the said town and county of the said town, on the 6th day of March aforesaid, and that calling the said special county court was illegal, and not warranted by law, or by the said writ, the same not being, according to law, a county court for the said town and county, nor the next county court of the said town, according to the terms of the said writ; but that the said meeting or pretended court was wholly void, and that the said writ and proclamation, and also the said election and return, were wholly null and void, and of no effect whatever," &c. Praying relief.

Appendix to the Votes, 1820.

For the petitioners it was contended, that the writ to the sheriff was the foundation of his authority, and ought to be strictly followed; that the terms of the writ in question had not been complied with, the proclamation for the election not having been made at the next county court. That a county court had been held on the 1st of March; that the writ came down on the 5th, and, consequently, that the next county court could not legally be held till the 29th; and that the special county court held on the 6th ought to be treated as

a nullity, as, previous to the 25th of G. III, c. 84, sheriffs could only hold the county court from month to month; and although that statute enabled sheriffs to hold special county courts for the election of the knights of shires, still that this statute could not be considered as applying to the present case, for although Nottingham was a county of itself, yet a committee, in 1819, had decided that the election of its members ought to be governed by those statutes which apply to borough elections.

Petition, 1820.

It was proved that a county court had been held on the 1st of March, immediately before the writ came down, and that the next county court would have been held on the 29th. No evidence was produced to show that the proceedings at this election were different to those usually observed; on the contrary, it was proved to have been in all respects conducted in the same manner as *the three last* elections.

Evidence.

The writ and return of members to serve in parliament for the town of Nottingham in the 27th of Hen. VI. (before that place was made a county of itself,) were produced and read; as also the charter granted by Hen. VI. to Nottingham in the same year, making it a county in itself; together with the writ for, and the return made, at the last election (*g*).

(*g*) The following is a transcript of an office copy of the writ and return above alluded to, and which I insert at

Petition, 1820.

The committee determined that the sitting

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length, to show the terms in which these instruments are now couched:—

"George the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the sheriffs of our town of Nottingham greeting: Whereas by the advice and assent of our council, for certain arduous and urgent affairs concerning us, the state, and defence of our said United Kingdom, and the church, we have ordered a certain parliament to be holden at our city of Westminster on the twenty-first day of April next ensuing, and there to treat and have conference with the prelates, great men and peers of our realm; we command and strictly enjoin ye, that (proclamation being made of the day and place aforesaid in the next county court of the said town, to be holden after the receipt of this our writ,) two burgesses of the most sufficient and discreet of the town aforesaid, freely and indifferently, by those who at such proclamation shall be present, according to the form of the statutes in that case made and provided, ye cause to be elected, and the names of such burgesses so to be elected, whether they be present or absent, ye cause to be inserted in certain indentures, to be thereupon made between ye and those who shall be present at such election, and them at the day and place aforesaid ye cause to come in such manner, that the said burgesses, for themselves and the commonalty of the said town, may have from them full and sufficient power to do and consent to those things which then and there, by the common council of our said United Kingdom, (by the blessing of God,) shall happen to be ordained upon the aforesaid affairs, so that, for want of such power, or through an improvident election of such burgesses, the said affairs may in no wise remain unfinished; willing, nevertheless, that neither ye, nor any other sheriff of this our said United Kingdom, be in anywise elected; and the said election in your full county of the said town

members were duly elected, and that the petition was frivolous and vexatious.

Petition, 1820.

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so made, distinctly and openly, under your seals, and the seals of those who shall be present at such election, certify ye to us, in our Chancery, at the day and place aforesaid, without delay, remitting to us one part of the aforesaid indentures annexed to these presents, together with this writ. Witness ourself, at Westminster, the first day of March, in the first year of our reign.

"*Plumer.* *Parry.*

"To the sheriffs of the town of Nottingham.
A writ of election to parliament, to be holden the twenty-first day of April next.

"*Plumer.* *Parry.*

"2d March 1824, received this writ at 2 o'clock, P. M.

"*Wm. Hurst*, Under Sheriff.

"The execution of this writ appears in certain schedules hereunto annexed, the answer of

"*John Huish*, and *Samuel Deverill*, } Gentlemen, Sheriffs."

"This indenture, made in full county at a special county court for the town and county of the town of Nottingham, held at the Town-hall, over the Exchange, otherwise the New Exchange, in the Great Market-place within the said town, (pursuant to the statute in that case made,) on the sixth day of March, in the year of our Lord one thousand eight hundred and twenty, and continued by adjournment there and from thence to the booth erected in the Great Market-place in the said town of Nottingham, to the eighteenth day of March, in the same year, between John Huish and Samuel Deverill, gentlemen, sheriffs of the town

aforesaid, of the one part; and Thomas Wakefield, John Houseman Barker, William Roworth, Samuel Hall, Edward Allatt Swann, Elihu Samuel Fellows, William Silverwood, Samuel Moore, Thomas Manlove, John Perry, and Samuel Hutton, with many other freeholders and burgesses of the said town, of the other part; Witnesseth, that by virtue of His Majesty's writ, under the great seal of Great Britain, to the sheriffs of the said town directed, and hereunto annexed, for the electing of two burgesses of the town aforesaid, to serve for the said town in His Majesty's parliament, to be holden at the city of Westminster, on the twenty-first day of April next ensuing; We, the said sheriffs, and the said Thomas Wakefield, John Houseman Barker, William Roworth, Samuel Hall, Edward Allatt Swann, Elihu Samuel Fellows, William Silverwood, Samuel Moore, Thomas Manlove, John Perry, and Samuel Hutton, and many other freeholders and burgesses of the said town, the major part of the whole town aforesaid being this present day at the Town-hall, in Nottingham aforesaid, sworn and examined according to the force, form and effect of the said writ, and of divers statutes in that case lately made and provided, and according to the directions of the said writ, have, (proclamation of the premises being first made,) freely and indifferently elected Joseph Birch, of the Hasles, in the county palatine of Lancaster, esquire, and Thomas Denman, of Russell-square, in the county of Middlesex, esquire, burgesses of the said town, the most sufficient and discreet, to attend at the said parliament, giving and granting unto the said Joseph Birch and Thomas Denman full and sufficient power, for themselves and the commonalty of the said town, to do and consent to those things which then and there, by the common council of the United Kingdom of Great Britain and Ireland, (by the blessing of God), shall happen to be ordained upon the affairs in the said writ specified.

In testimony whereof, as well the hands and the seal of office of the said sheriffs, and also the hands and seals of the

other parties above named, are hereunto interchangeably set, the day and year first above written.

"John Huish, Samuel Deverill,	Sheriffs -	(L. S.)
Thos. Wakefield	- -	(L. S.)
J. H. Barker	- - -	(L. S.)
Wm. Roworth	- - -	(L. S.)
Samuel Hall	- - -	(L. S.)
Edward Allatt Swann	-	(L. S.)
Elihu Samuel Fellows	- -	(L. S.)
W. Silverwood	- - -	(L. S.)
Sam. Moore	- - -	(L. S.)
Thos. Manlove	- - -	(L. S.)
John Perry	- - -	(L. S.)
Samuel Hutton	- - -	(L. S.)

"Signed, sealed and delivered, (being first duly stamped,) in the presence of us,

"*Josh. Frearson.*
W. C. Sineker."

COUNTY OF THE TOWN OF POOLE.

Ch. of William Longespee, temp. R. 1.

Brady on Boroughs, 81.

Poole is a borough by prescription. The first charter to be found has no date, but is supposed to have been granted some time between 1st and 9th Rich. I, by which William Longespee, lord of the manor of Great Canford and Poole, granted and confirmed to his burgesses of Poole, and their heirs, *inter alia*, "That his said burgesses should have well and peaceably their yearly liberty of herbage in his heath as they had always been accustomed to enjoy, and necessaries for their firing in his heath or common, by view of his bailiffs (*a*)." This charter

(*a*) Lord Glenbervie, in his report of the Poole case, states, that "under this grant, confirmed by all the subsequent charters, the *inhabitants* of Poole have always enjoyed, and to this day continue to enjoy, a right of common." 2 Doug. 235. Under an act of the 45th G. III, the wastes in Great Canford and Poole were inclosed; and by a compromise with the freeholders, out of Poole a certain proportion, viz. one-third of all the allotments of the heaths in Canfords for lands in Poole, was allotted to the corporation in respect of lands which they held; and the other two-thirds, to the owners of messuages, &c. in Poole; and all the wastes in Poole were allotted to the corporation and owners of messuages, &c. in the like proportions.

likewise prescribes the form of government for the borough. Ch. temp. R. 1.

The next charter bears date 10th June, 1371, and is granted by William de Montacute, earl of Salisbury and lord of the manor of Canford, who inspected and confirmed the last recited charter, and granted that the prepositus should from thenceforth be called mayor, and renewed, in more express terms, the permission to the burgesses to dig turf, &c. Ch. of William de Montacute, 45 Ed. 3.

The third charter is granted by Thomas de Montacute, earl of Salisbury and lord of the manor of Canford, on the 8th of February, 1411, and recites and confirms the two preceding charters. Ch. of Thomas de Montacute, 12 Hen. 4.

"The fourth is a grant of Henry VI, in the 11th year of his reign (1433), founded, as it would seem, on an act of parliament to the same effect, (Rot. Parl. in Turr. Lond. 11th Hen. VI, n. 38,) to the mayor and burgesses, that Poole shall be a free port; and giving to the said mayor and burgesses licence to wall, intrench and fortify the said town and port of Poole, and parts adjacent; the said mayor and burgesses having made an offer to that effect." Ch. 11 Hen. 6. 2 Doug. 238.

In Cotton's Abridgment also of the Tower Records is the following entry:

"At the request of the Commons it is enacted, that the port of Melcombe shall be removed to Poole, and that Melcombe be no longer a port; that the mayor of Poole may wall the town, take p. 610.

Charters.

recognizance, and enjoy the like liberty as the port of Southampton hath, any statute or ordinance to the contrary notwithstanding."

Ch. 31 Hen. 6.

By a charter (*b*) dated 1st July, 1454, that king granted to the mayor, bailiffs, burgesses and inhabitants, a weekly market, and two annual fairs.

Ch. 1 Ed. 4.

Ed. I, in 1460, inspected and confirmed the charter of 11th Hen. VI.

Ch. 3 Hen. 8.

Hen. VIII, in the 3d year of his reign, conferred a charter on the mayor and burgesses of the town of Poole, inspecting, reciting and confirming the above-mentioned charters of 31st Hen. VI. and 1st Ed. IV.

Ch. 12 Hen. 8.

Hen. VIII. (*c*) likewise granted another charter in 1521.

Ch. of Arthur Plantagenet, vice-admiral, &c. 18 Hen. 8. 2 Doug. 240.

"On the 4th of September, 1527, Arthur Plantagenet, viscount Lesley, vice-admiral of England, reciting that the deputy-admiral of England, and his commissary-general, had inspected all the royal grants and privileges, and the former grants of old, and the grant of William de Montacute to the mayor, brethren, bailiffs, burgesses and inhabitants, and also the late confirmation by Hen. VIII, by which they are fully

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(*b*) Lord Glenbervie adds, "this too was by authority of parliament." 2 Doug. Rep. 240.

(*c*) This charter was considered immaterial in the petition reported by Douglas, and is not noticed in the charter 10th Eliz.

excepted from all kind of jurisdiction and power of the admiral of England, declares that the said privileges are most clearly demonstrated to belong to the said mayor, brethren, bailiffs, burgesses and inhabitants, and ratifies and confirms the same."

Ch. 18 Hen. 8.

Elizabeth, by a charter dated 18th February 1559, inspected, recited and confirmed the former charters granted by the lords of the manor of Canford (*d*).

Ch. 1 Eliz.

The next and most material charter to the present inquiry is one granted by Queen Eliz. in the 10th year of her reign, which, confirming the charters of Hen. VI. and Hen. VIII, and all the aforesaid fairs, markets, liberties, franchises, acquittances and immunities to the mayor, bailiffs, burgesses and inhabitants of the town of Poole, and their successors, and reciting that "the mayor, bailiffs, burgesses and inhabitants, from the time whereof the memory of man is not to

(*e*) Ch. 23 June, 10 Eliz.

Confirmation of former charters, &c.

Recital of former privileges.

(*d*) On the hearing of the petition of 1775, there was likewise read an instrument, without date, confirming and ratifying "unto the mayre, baylyfs, burgesyes and inhabitants of the said town and borough of Poole, their arms thereon emblazoned, granted by Clarencieux, kynge at armes," and purporting to be made "in this my present visitacion within the countye of Dorsete."

(*e*) The extracts from this charter are taken from the translation produced before the committee on the last election for the county of Warwick; the others from the report of the Poole case in Douglas's Election Reports, v. 2, p. 225.

Ch. 10 Eliz.

the contrary, have had, held and enjoyed the aforesaid rights, jurisdictions, liberties, franchises, acquittances and privileges, and divers other customs, liberties and immunities, exemptions and jurisdictions, as well by prescription as by reason and force of the aforesaid charters," &c. granted the same "to the burgesses and inhabitants of the town aforesaid, and their heirs and successors;" and reciting also, that the burgesses and inhabitants had petitioned her majesty to renew and create the said burgesses and inhabitants into "another body corporate and politic;"

Petitioned to be re-incorporated.

Poole to be a free town.

Granted, that the "town of Poole aforesaid shall be and remain hereafter for ever a free town of itself, and shall be for ever hereafter incorporated of one mayor and two bailiffs, burgesses and commonalty; and that the same mayor, bailiffs, burgesses and commonalty, and their successors," should be incorporated, with perpetual succession, by the name of "the mayor, bailiffs, burgesses and commonalty of the town of Poole," with power to purchase lands, &c.

Incorporated of one mayor, &c.

Election of mayor and bailiffs.

Mayor to be escheator.

The charter then provided for the election of the mayor and bailiffs, and created the mayor for the time being escheator of the said town, suburbs and precincts of the same.

Also granted "to the bailiffs, burgesses and commonalty, and their successors, and to the *inhabitants and resiants* within the said town of Poole, for the greater tranquillity," &c. of the same, exemption from the precepts or mandates

of the steward, marshal or clerk of the market of the household; and to the mayor, bailiffs, burgesses and commonalty, and their successors, that the mayor, and his successors, should exercise the office of clerk of the market of the household within the same town.

Ch. 10 Eliz.

Mayor to be clerk of the market.

It then granted to the mayor, bailiffs, burgesses and commonalty, their heirs and successors, a staple to take recognizance of debts, &c.; and enabled "the same burgesses, and their successors," to elect one mayor and two constables of the staple from year to year, &c.

Grant of a staple.

"And moreover, of our more abundant grace, we have granted, for us, our heirs and successors, to the aforesaid mayor, bailiffs and burgesses and commonalty of the town of Poole aforesaid, and to their successors, that the aforesaid town, with the suburbs and precincts and places aforesaid, shall be one entire county, corporate in deed and in name, and distinct and entirely separated from the county of Dorset for ever; and that the same county of the town of Poole, so incorporated, distinct and separated from the county of Dorset, shall for ever be named, called and intitled the county of the town of Poole."

Poole to be a county, &c.

Also, that the mayor, bailiffs, burgesses and commonalty of the town aforesaid, and their successors, should have one sheriff, to be elected yearly by the "burgesses of the same town, and their successors," from their common burgesses, who is required to be sworn before the burgesses,

Sheriff, election of.

Ch. 10 Eliz.

and to have his name certified to the barons of the Exchequer by the mayor, under his seal of office.

To hold county court, &c.

The sheriff is also directed to hold the county court of the said town monthly on Mondays, and to execute his office as fully as any other sheriff in England: also to have the return of all writs, &c. to the exclusion of the sheriff of Dorset.

Mayor's court on Thursdays, &c.

Likewise the mayor, bailiffs, burgesses and commonalty of the town aforesaid, and their successors, are empowered to have and to hold a court on every Thursday, to take cognizance of all pleas, &c. before the mayor and senior bailiff, with power to commit to the town prison, in the same manner as the sheriffs of London.

Assize of bread.

Also the assize of bread.

Mayor, &c. to keep the peace.

And that the mayor for the time being, and some one skilled in the law, and also four burgesses, to be elected and nominated in every year, be henceforth keepers of the peace, &c. "within the town, liberty and precinct aforesaid," with power to commit to the prison of the town, the justices of Dorset being excluded.

Justices of Dorset excluded.

View of frankpledge.

This charter also gave to the mayor, bailiffs, burgesses and commonalty, and their successors, view of frankpledge, &c. and all fines, &c. And further, that the burgesses, &c. should not serve on juries out of the town and liberty, &c.

Reservation of privileges, &c. to the inhabitants, v. ante, p. 24.

"Moreover we do will, and have granted, &c. that the inhabitants, burgesses, and commonalty of the town of Poole aforesaid, may and shall have their guild, and all their liberties, fran-

chises, privileges, jurisdictions and customs, by land and by sea, as well and peaceably, and justly and freely, and quietly and honourably, as the mayor, bailiffs and burgesses, of our town of Southampton (*f*), more freely and quietly have, no one doing to them thereupon any injury or outrage; and all other liberties, franchises, immunities, customs, grants and privileges, which the mayor, bailiffs and burgesses, and inhabitants of the town of Poole aforesaid, heretofore have used and enjoyed." The charter then exempts the inhabitants and burgesses of Poole from "toll, passage, pontage," &c. &c.

Ch. 10 Eliz.

As enjoyed at Southampton.

Also, that the mayor, bailiffs, burgesses and commonalty, their heirs and successors, should have the return of all writs within the town of Poole, and no sheriff, &c. to intermeddle, unless default be by them made.

Mayor to have the return of writs, &c.

The mayor, bailiffs, burgesses and commonalty, are also enabled to elect a coroner from among themselves, for the town and liberty of the same.

Mayor, &c. to elect a coroner.

Also it is granted, to the mayor, bailiffs, burgesses and commonalty, and their successors, that no one of the inhabitants or resiants within the said town, should be impleaded out of the said

No inhabitant to be impleaded out of the town.

(*f*) Richard Thomsonne, town clerk of Poole, in 1558, 1 Eliz. charges the town 3*d*. 4*s*. and 1*s*. for his man's horse, when he went on the town's business to Southampton, to examine the charter of that town, previous to Poole being made a corporation and county town.—Hutchin's History of Dorsetshire, v. 1, p. 604.

Ch. 10 Eliz.

town concerning their tenements, &c. within the said town, and that no writ shall run within the said liberties, &c. except a writ of right, &c. &c.

Further confirmation of privileges, &c.

"And that through all our dominions and realm they shall have and hold all their liberties and free customs hitherto obtained and used, as quietly and wholly as the burgesses of our town of Southampton, or any others of our kingdom and realm, better and more freely have and hold within their liberties: Wherefore we do will and firmly command, for us, our heirs and successors, that the aforesaid mayor, bailiffs and burgesses, and their successors for ever, shall have all liberties and prescriptions, and use the same from henceforth for ever, freely and without the hindrance of any one as aforesaid."

Exemption from murage, &c.

Lastly, the mayor, bailiffs and burgesses, are exempted from murage, paivage and kaiage, throughout England.

Ch. 19 Car. 2.

19 Car. II, a charter confirming all former privileges, &c. was granted to the mayor, bailiffs, burgesses and commonalty, which enabled them yearly to choose four constables, (two to be called capital constables,) a recorder and other corporate officers, likewise making other corporate regulations.

Quo warranto, 26 Car. 2.

26 Car. II, a "*quo warranto* issued against the corporation of Poole, by the name of the mayor, bailiffs, burgesses and commonalty, and their franchises were seized into the hands of the crown."

30 Car. II, the burgesses and inhabitants of Poole submitted, and petitioned to be restored to their franchises. Petition of inhabitants.

4 Jac. II, a charter was granted, which, reciting the judgments obtained against the mayor, bailiffs, burgesses and commonalty, &c. confirms and regrants all former privileges, &c. by or under whatsoever name granted or enjoyed. Ch. 4 Jac. 2.

The municipal government of the town is in the hands of "a mayor, sheriff, recorder, four justices, and an uncertain number of aldermen, (as every person, after he has served the office of mayor, commences alderman), a town clerk, and common councilmen." Municipal government.

The lord lieutenant of Dorsetshire is also appointed for the county of the town of Poole. Lord lieutenant.

The mayor and five others are justices of the peace. Justices of the peace. Ante, p. 346.

The returning officer is the sheriff. Returning officer.

The proprietors of freeholds, situate within the county of the town of Poole (*g*), vote at the election of the knights for Dorsetshire. Freeholders vote for Dorsetshire.

(*g*) "The freeholders of this town, though a county of itself, claim a right to vote at the election for knights of the shire for this county; but this claim has not been always allowed, and their right remains undetermined."—Hutchin's Hist. Dorsetshire, v. 1, p. 6.

At the contested election for Dorsetshire, in 1806, Mr. Bankes objected to the votes of the Poole freeholders, but did not persevere in it; and in the contest which ensued in the following year, they polled without objection.

Right of election.

"The right of election for the town of Poole is in the mayor, bailiffs and burgesses."

Journals, 22 Feb. 1791. pt. 2, 56, c. 2.

According to Carew, Poole first sent members to a council 14 Ed. III.; subsequently to a parliament, in the 36th and 42d years of that reign, when it intermitted till the 33d of Hen. VI.

Willis's Parl. Not. 18.

Willis says, the "town of Poole sent to a council 14 Ed. III.; and to two of his parliaments, viz. annis 36 & 42, ceased returning members till 31 Hen. VI, since when it has constantly sent."

The first question upon the right of voting at Poole arose in 1661, on a petition against the return of Mr. Moreton and Mr. Constantine, when the House decided, "that the out-burgesses had equal voices with the in-burgesses."

Journ. 16 June 1661, v. 8, p. 272.

Petition, 1688.

In 1688, a petition was presented against the return of Sir Nathaniel Napper to the Convention Parliament, when the principal point in dispute was, whether the right of election was in the mayor and burgesses only, or in the mayor, burgesses and commonalty who paid scot and lot; when the motion agreed to in the committee, "that the right of election of burgesses to serve in this convention, for this town and county, is in the mayor, burgesses and commonalty, of the said town and county, who pay scot and lot," was passed by the House in the negative.

Resolution, Journ. Feb. 9, 1688, v. 10, p. 24.

Petition, 1775. 2 Doug. 225.

In 1775, Mr. Fox, Mr. Williams, and several inhabitants and householders, paying scot and lot within the borough and county of the town of

Poole, petitioned against the return of Sir Eyre Coote and Mr. Maughur. The validity of the return depended upon whether the right of election was "in the burgesses of the borough exclusively, or in the inhabitants and householders within the borough, paying scot and bearing lot." It was admitted, that if the right was in the former only, the sitting members had the majority; if in the latter, that they had not. The committee resolved that the sitting members were duly elected, thereby confining the right to the corporate body.

Petition, 1775.

Resolution.

This case was argued at very considerable length, and the respective meanings of the words "*burgenses*, *communitas* and *inhabitantes*," as used in the different charters granted to, and the returns made by, the town of Poole, much canvassed and discussed; the petitioners contending that they were used as synonymous terms, whereby all the inhabitants of the borough were included, and that the word *communitas* ought to be translated commonalty; whereas the counsel for the sitting members maintained, that the word *communitas* should be construed community, in which sense the inhabitants at large would not be included; and that if they had, the word *commonalitas* would have been used. They also relied on the language of the charters to show, that the word inhabitants was frequently used as expressly contradistinguished from the corporate body, and consequently that they could not be intended to

Petition, 1775.

be included under the denomination of *communitas*. The committee, by their resolution, confirmed the latter construction. On this occasion the charters before recited were read, also various returns, commencing with one of 36 Ed. III, and ending with one of the 10th William III.

Returns, 36E.3. 2 Doug. 244, et seq.

In the first the electors were not named, it being a general return by the sheriff for the whole county. By that of 2d Sept. 12 Ed. IV, the *burgesses* appear to have elected. From this period to the 1st of Mary the returns are lost; but one of the 23d Sept. of that year, as well as one of the 1st Nov. 1 & 2 Ph. & Mary, and one of the 1st of Eliz. were produced, which were made between the sheriff of Dorsetshire, and the mayor, bailiff and burgesses, as electors. The first return, subsequently to the 10th Eliz. is dated 14th April, 14 Eliz. and is made "in the name of the mayor, senior bailiff, and many others, (*nominatim*), free and lawful men of the said county, dwelling and residing electors." Those of 30 of Eliz. and 18 Jac. I. by the mayor, aldermen, burgesses and commonalty. One of 1st April, 13 Car. II, is between the sheriff, mayor and others, aldermen and burgesses, inhabitants. 1st of Wm. & Mary, the return was made by the mayor, bailiffs and burgesses. 7th Wm. III, the mayor, senior bailiff and others, aldermen, burgesses and commonalty, incorporated of the said town and county, elected. There were likewise twelve returns produced on

12 Ed. 4.

1 Mary.

1 & 2 Phil. & Mary.

1 Eliz.

14 Eliz.

30 Eliz. & 18 Jac. 1.

13 Car. 2.

1 W. & M.

7 W. 3.

behalf of the sitting members, beginning 12th Nov. 26 Eliz. and ending 10th Aug. 10 W. III, made in the name of the mayor, bailiffs and burgesses only. It was also admitted by the petitioners, that the word "commonalty" was omitted in all returns since the year 1695, from which period the inhabitants had never voted.

Petition, 1775.

The right of voting for Poole was likewise brought under consideration in 1782, and again in 1791, when, upon a statement of the right delivered in, as claimed by the contending parties, pursuant to the 28 G. III, it was finally resolved to be "in the mayor, bailiffs and burgesses only."

Petitions, 1782 & 1791.

c. 52, s. 15.

2 Doug. 287, in notis.

COUNTY OF THE TOWN OF SOUTHAMPTON.

Domesday-book.

SOUTHAMPTON was a borough, situate within the county of Hants, or Southampton, at the time of the Conquest, the inhabitants of which very early possessed corporate privileges and a guild.

Ch. Hen. 2.

Hen. II. confirmed "to his men or burgesses of Southampton their gild, and their liberties and customes by sea and land," as appears by an inspeximus contained in a charter granted to them, bearing date 28th of March, 1 Ed. III, in the following terms:—"Rex eisdem archiepiscopis, &c. salutem. Inspeximus cartam quam celebris memorie dominus H, quondam rex Angliæ progenitor noster, fecit burgensibus de Southampton[ia] in hæc verba. H. rex Angliæ, &c. præpositis et ministris suis de Hanton[a] salutem. Præcipio quod homines mei de Hanton[a] habeant et teneant gildam suam et omnes libertates et consuetudines suas, in terra et in mari, ita bene et in pace, et juste et libere, et quiete et honorifice, sicut habuerunt melius et liberius et quietius tempore regis H. avi mei; et nullus eis super hoc ullum injuriam vel con-

Mad. Firm. Burg. 27.

tumeliam faciat. Teste, &c." Then follows an inspeximus of a charter granted by Rich. I.; also of another granted by king John.

Charters, Ric. 1. & John.

By the following charter, dated 9th May, 25 Hen. VI, the town of Southampton is made a county of itself, distinct from the county of Southampton.

Ch. 25 Hen. 6.

"For the mayor and burgesses of the town of Southampton (a). } The king to his archbishops, bishops, &c. greeting. Know ye, that whereas upon the relation and complaint of the mayor, bailiffs and burgesses of our town of Southampton, we are informed in what way in that town, which is situate near the sea-coast, and abounds above the rest with merchants, seamen and mariners, resorting from far distant parts to that town, with a great number of carracks, gallies and ships, coming to the port there with merchandizes, and also within the port and precinct of the same, and in the port of Portsmouth, not only the mayor, bailiffs, burgesses and inhabitants of the said town, but also very many of the said foreign merchants, seamen and mariners, have been heretofore, and yet are daily taken, arrested and imprisoned, and manifoldly disturbed by the sheriffs of the county of Southampton, their bailiffs and ministers, whereby they are less

Southampton situate near the sea-coast.

Resorted to by foreign merchants,

who, together with the mayor, &c. are arrested by the sheriffs of the county of Southampton,

(a) This is a copy of the translation produced before the committee; and as it relates entirely to the change to corporate county, I have inserted it at length.

Ch. 25 Hen. 6.

and therefore unable to attend to their business,

have besought us to provide a remedy.

In consideration of the premises,

and the fee-farm rent of 340 marks,

and that the foreign merchants, mayor, &c. may be able to attend to their business,

do grant to the mayor, &c.

Southampton and Portsmouth to be one entire county,

able quietly to attend to their business as they ought, to the damage, disturbance and injury of the same mayor, bailiffs, burgesses and inhabitants, and merchant strangers, and to the manifest disgrace of the said town, have humbly besought us to provide a suitable remedy in this behalf: We, considering the premises, and especially the great expences and charges which the aforesaid mayor, bailiffs and burgesses do sustain and bear, as well in defence of our aforesaid town, as in the payment of 340 marks, payable yearly unto us for the fee-farm of the said town, willing, for this reason, to show more ample grace to the said mayor, bailiffs and burgesses, to the intent that, as well the said mayor, bailiffs and burgesses, and inhabitants, as the foreign merchants, seamen and mariners, resorting to our aforesaid town, may for the future be able more freely and quietly to attend to their businesses, and the said mayor, bailiffs and burgesses, more easily to support the charges and expences aforesaid, have, of our special grace, granted, and by these presents do grant, to the aforesaid mayor, bailiffs and burgesses of the town aforesaid, and their successors, that our said town, with the port and precincts of the same, and the port of Portsmouth, which are now called the town of Southampton, and the precincts of the said town, shall be one entire county, corporated in right and name, and distinct and separated from the county of Southampton for ever; and that the same county, so

corporated, distinct, and separated from the county of Southampton, shall be perpetually named, called, and entitled the county of our town of Southampton; and that the mayor, bailiffs and burgesses of the town aforesaid, and their successors, shall have in the town aforesaid one sheriff, to be elected in the form underwritten, viz. that the aforesaid mayor, bailiffs and burgesses now being, on the morrow of the Apostles Philip and James next coming, shall elect from themselves one able and fit burgess, of the town aforesaid, as sheriff of the said town; which said sheriff, so elected, shall have and occupy the office of sheriff of the said town until Friday next after the feast of St. Matthew the Apostle next coming, and during the same day, until on the same day another of the burgesses of the said town shall be elected sheriff of the said town; and that on the said Friday, and thenceforth in every year on Friday next after the feast of St. Matthew the Apostle, the mayor, bailiffs and burgesses of the town aforesaid for the time being, may meet in any certain place in the town aforesaid, where it shall best please them, and may elect one discreet, able and fit of their coburgesses, as sheriff of the said town, and may prefer and create him sheriff of the said town; and that every burgess of the town aforesaid, in form aforesaid elected, preferred, and created sheriff of the said town, as well on the said morrow of St. Philip and James as aforesaid yearly,

CH. 25 Hen. 8.

to be called the county of the town of Southampton.

Mayor, &c. to have one sheriff,

to be elected on the morrow of St. Philip and St. James next.

Mayor, &c. to elect sheriff.

Ch. 25 Hen. 6.

To be sworn in before the mayor, &c.

shall, in due manner, take a corporate oath before the mayor, bailiff and burgesses there for the time being, duly and faithfully to perform, exercise and execute the office of sheriff there, from the time when he shall be so elected and preferred, until another sheriff shall be elected and preferred in form aforesaid, so that such sheriff, so elected, preferred and created, shall in nowise be bound or compelled to take such oath elsewhere than within the town aforesaid, or before any other or others than the mayor, bailiffs and burgesses of the town aforesaid for the time being; and that the mayor of the said town for the time being, shall yearly certify to the barons of the Exchequer of us, and of our heirs, the name of such sheriff so elected, preferred, created and sworn, by letters patent, sealed with the seal of his office; and that such sheriff, when he shall be so elected, preferred, created and sworn, and his successors after they shall be sworn, shall hold our county courts of the town aforesaid, within the town aforesaid, from month to month, on Monday, throughout the year, and shall make, exercise and execute, in his county, within the town aforesaid, all and singular, which any sheriff of any county of our kingdom of England may, or in anywise ought to do in his county, when and so often as to him it shall seem expedient and necessary; and that we, our heirs and successors, will cause to be made and directed, and our heirs and successors shall cause to be made and directed, all and singular the writs,

Not compellable to take the oath elsewhere.

Mayor to certify the name of the sheriff to the barons of the Exchequer under his seal of office.

Sheriff to hold county court for the town of Southampton, on Mondays,

and execute the office of sheriff as amply as in other courts.

Ch. 25 Hen. 6.

bills, precepts and mandates of us, our heirs and successors, from whatsoever cause or causes arising within the town aforesaid, the precinct or port of the same, or the port of Portsmouth aforesaid, and which ought to be executed by the sheriff of the county of Southampton, if the sheriff of the said town, so made of one burgess of the said town, should not be sheriff of the town of Southampton for the time being, so that no other sheriff of our kingdom, or the bailiff or servant of any sheriff of the said kingdom, except only the sheriff of us and of our heirs of the town aforesaid, and their bailiffs or servants, shall in anywise enter the said town, precincts or port aforesaid, to do or execute any thing which may or can in anywise pertain to his office, nor shall he in anywise intermeddle therein. And in case such sheriff so elected and created shall depart this life within the year, or shall be removed or displaced from such office for any debt or injury, that the mayor, bailiffs and burgesses of the town aforesaid, and their successors, may, within ten days after such death, removal or displacing, elect from themselves another more honest and discreet person, and may prefer and create him a sheriff of the county aforesaid, so that he so elected, preferred and created, shall take a corporate oath before the mayor, bailiffs and burgesses of the town aforesaid, well and faithfully to rule and govern the office of sheriff of the town aforesaid for the residue of the said year as aforesaid; and that the said mayor shall from time to time certify

All writs, &c. to be directed to the sheriff of the town and county of Southampton.

No other sheriff, &c. to enter to execute process.

In case of sheriff's death within the year,

mayor, &c. to elect a successor,

Ch. 25 Hen. 6.

the barons of us, our heirs and successors, of the name of such sheriff as is aforesaid. Also we have granted for us, our heirs and successors, to the said mayor and burgesses, and their successors, that no steward, marshal, or clerk of the market of our household, or any admiral, or any escheator, or other officer or officers of us, our heirs and successors whomsoever, or their deputy, or any other or others in their name, shall enter the aforesaid town of Southampton, or the port thereof, or the port of Portsmouth, or the precinct thereof, either in the presence of us, our heirs and successors, or in the absence of us, our heirs and successors, either by land or by water, to make session or inquisition there, or to make, exercise or execute any thing concerning any the offices or office of any of them, of or for any thing, cause or matter whatsoever, wheresoever arising, whether by land or water. And further, of our more abundant grace, we have granted for us, our heirs and successors, to the aforesaid mayor, bailiffs, burgesses, and their successors, that neither the same mayor, bailiffs and burgesses, nor any of them, nor their heirs or succesors, nor any of them, nor the inhabitants of the town aforesaid, shall hereafter be made taxors, assessors or collectors, taxor, assessor or collector, of any tax, quota or subsidy, fifteenth and tenth, or of any tax, imposition or talliage whatsoever, to be granted to us, our heirs and successors, by the commonalty of our kingdom of England, of or in the county of Southampton aforesaid, or

No steward, &c. to enter,

to make session or inquisition within Southampton, &c.

Neither mayor, &c.

to be appointed taxors of any tax, &c.

elsewhere, except in the aforesaid town of Southampton only, but that they and every of them shall be therefrom wholly quit and discharged for ever; and that immediately after the exhibiting or showing of this our present charter, or of the enrolment thereof, in whatsoever courts of us, our heirs and successors, the same mayor, bailiffs and burgesses, their heirs and successors, and every of them, on the occasions aforesaid, or any of them, shall in nowise be further distrained, but from the same courts on that occasion shall be quickly dismissed, and that they and every of them shall be discharged from such taxations, assessments and collections; and all processes in this behalf to be made shall wholly cease, without any writ of us, our heirs and successors, to be thereupon prosecuted: Provided always, that by force of our present grant, no injury shall in anywise be produced to the mayor, bailiffs and burgesses of the town aforesaid, as to other the liberties, franchises, immunities and acquittances, to them or to their predecessors, by us or our progenitors, heretofore granted or by them used; but that the same mayor, bailiffs and burgesses, their heirs and successors, shall be enabled henceforth wholly to use and enjoy the same liberties, franchises, immunities and acquittances, in manner as they and their predecessors have been heretofore accustomed reasonably to use and enjoy the same: Provided also, that by force of our said grant, no injury shall in anywise be pro-

Ch. 25 Hen. 6.

elsewhere than in the town of Southampton.

Reservation of privileges to Southampton.

Ch. 25 Hen. 6.

duced to the bailiffs, burgesses or inhabitants of the town of Portsmouth, as to any liberties, franchises, acquittances or immunities, to them heretofore granted, or by them of old time used and approved, and although express mention of the true annual value of the premises, or of any of them, or of other the gifts and grants to the same mayor, bailiffs and burgesses, or to their predecessors, or to the late bailiffs and burgesses of the town aforesaid, and to their predecessors, by us or by our progenitors heretofore made in these presents, is not made, or any statute, act, ordinance, restriction or mandate heretofore made, or any thing, cause or matter whatsoever notwithstanding. These being witnesses," &c. &c.

Ch. 30 Hen. 6. Vide Mad. Firm. Burg. 28.

On the 12th of September, 1452, another charter was granted to the "burgesses" of Southampton, by which they are incorporated as a perpetual corporate community, by the name of the "mayor, bailiffs and burgesses" of the town of Southampton.

Ch. Car. 1. Municipal government. Willis's Not. Parl. 46.

By a charter granted by Car. I, Southampton is thenceforth to be "governed by a mayor, recorder, nine justices, a sheriff, two bailiffs, twenty-four common councilmen, and twenty-four burgesses."

Lord Lieutenant.

The lord lieutenant of Hampshire is also appointed for the town and county of Southampton.

Returning officer.

The sheriff is the returning officer; but by a resolution of the House of Commons, dated 3d April 1735, it was decided, "That the mayor

and bailiffs of the town and county of the town of Southampton are the returning officers for the said town and county."

Right of election.

22 Journ. 445, col. 1, 449.

The proprietors of freeholds situate within the county of the town of Southampton vote at the election of the knights for Hampshire.

Freeholds in Southampton confer votes for Hampshire.

The right of election for the county of the town of Southampton, according to the last resolution of the House of Commons, is as follows: "Resolved, That the out-living burgesses, as well as the burgesses inhabitants, and other inhabitants paying scot and lot, have a right to vote for electing members to serve in parliament for the town and county of the town of Southampton."

Right of election.

11 Journ. 519, col. 1.

The right of election for this place, before and subsequently to the charter of 25th Hen. VI, appears to have been corporate and personal only. In the 1st year of Ed. III, 120 years before it was made a county of itself by Hen. VI, the following return was made: "Universis, &c. *major, ballivi, et cæteri comburgenses* villæ Southampton, salutem in domino: Noverit universitas vestra nos assignasse, et per presentes constituisse dilectos nobis in Christo, Johannem Forst, et Nichum de Staumford, comburgenses nostros essendi pro nobis ad parliamentum domini regis, &c." In the 29th of Hen. VI, four years subsequent to the charter of 25th Hen. VI, the right of election was still corporate, though the return was made by different parties. Respons.:

Return, 1 Ed. 3.

Carew, pt. 2, 139.

Return, 29 Hen. 6

"Thomæ Kirson et Thomæ White, *ballivorum* libertatis villæ Southampton, pro parliamento tenend. apud West. in festo Sancti Leonardi, prox futur. viz. anno regni regis Hen. VI. 29.

"Manucapt. Johannis Payne, unus burgens. villæ Southampton, pro parliamento prædicto electi, Thomas Payne, Johannes Gille. Manucapt. Nichi Holmbegg, alterius burgensium villæ South. &c. Johannes Kyrkely et Johannes Brockhyrst."

Carew, pt. 2, p. 139.

Petition, 1689. Journals, v. 10, 321.

In 1689, Sir Charles Wyndham petitioned against the return of Mr. Fleming, on which occasion, the right of election being disputed, several returns were produced, which show that the mode of election at those periods was by no means uniform.

Returns. 33 Hen. 8.

"33 Hen. VIII, about thirty-six burgesses and free tenants elected. Indenture under their seals."

1 Mary.

"1 Mariæ. Assensu burgensium et *inhabitant' villæ Southampton* electi sunt.—Indentura sub sigill. burgens. et inhabitantium prædic."

43 Eliz.

"43 Eliz. Burgenses *villæ præd.* qui *in pleno comitatu* interfuerunt, eligerunt.—Indentura sub sigillis suis."

21 Jac.

"21 Jac. In *pleno com.* per assens. burgensium et inhabitant. *ejusdem villæ* electi fuerunt.—Sub sigillis suis."

1 Car. 1.

"1 Car. I. Burgenses et inhabitant. *villæ et comitatus* præd. eligi fuerunt.—Sub sigillis suis separatim."

"30. 31 Car. II. Et al. burgenses et inhabitantes *villæ præd.* eligerunt.—Sub sigillis suis separatim." Petition, 1689. 30. 31 Car. 2.

The petitioner stated the right of election to be in "the burgesses and inhabitants of the said town paying scot and lot." "Mr. Fleming claimed to be chosen by the mayor, bailiffs and select number of burgesses of the corporation." "If the right of election was in the burgesses and inhabitants at large, it was agreed the petitioner was chosen; if in the select number, the sitting member." Right of election.

"The committee resolved, That the right of election of burgesses to serve in parliament for this town and county, is in the burgesses and inhabitants of the said town and county," and that Mr. Fleming was not duly elected. Resolution. Journals, v. 10, p. 321.

In 1695, the right of election for Southampton was again considered, upon the hearing of the petition of Mr. Smith against the return of Sir Benjamin Newland, the petitioner contending "that the right of election was in the mayor, bailiffs, burgesses inhabitants, and other inhabitants of the said borough, and that the out-living burgesses had no right to vote:" whilst Sir Benjamin insisted "that the out-living burgesses had a right to vote as well as the burgesses inhabitant." Petition, 1695. Journals, v. 11, 519. Right of election claimed by the petitioner. That by the sitting member.

"The committee resolved, That the out-living burgesses, as well as the burgesses inhabitants, and other inhabitants paying scot and lot, have a right to vote for electing members to serve in Resolution.

Petition, 1695.

parliament for the town and county of the town of Southampton," and "that Sir Benjamin Newland was duly elected;" which determination is the last decision on the right of voting for this place.

11 Journ. p. 519, c. 1.

Petition, 1775.

In 1775, a petition was presented by certain inhabitants of Southampton against the return of Mr. Fleming, on the ground that he was ineligible, having been sheriff for Hampshire at the time of his election. This petition stated, "that though the town of Southampton is governed by a mayor, bailiffs and burgesses, and has a sheriff of its own, and the sheriff of Hampshire or county of Southampton has no office to execute within the said town; yet it has been usual, time immemorial, for persons having freeholds within the said town, to vote, in right of such freeholds, for knights of the shire or county at large; and one battalion of the militia of Hampshire, or county at large, is annually trained and exercised within the town of Southampton, which seems to imply that the said town is still a part of the county at large, and not totally distinct or independent of the same." On the hearing of the petition, "it was admitted that Mr. Fleming was sheriff of Hampshire at the time of his election, that the town of Southampton was a county of itself, that there is a sheriff of the town to whom the writ of election is sent, and who, in consequence of the writ, issues his precept to the mayor and two bailiffs, they being the returning officers." The

4 Doug. Rep. 89.

Admissions.

committee resolved, "That it is the opinion of this committee, that John Fleming, Esq. being sheriff for Hampshire at the time of the last general election, was eligible to serve in parliament for the town of Southampton." Petition, 1775. Resolution. 4 Doug 143.

The eligibility of a sheriff was also considered in the Abingdon case, in which he was held to be ineligible; but that case differs from this, because Mr. Mayor, as sheriff of Berkshire, had the return of the writ of election. In that instance, Mr. Bayley and Mr. Mayor were candidates, Mr. Mayor being at that time high sheriff for Berkshire, of which Abingdon is the county town. Mr. Mayor was returned, and Mr. Bayley petitioned, and the question raised was, "whether the high sheriff of a county may be chosen to serve in parliament for a *borough* within his county." The committee decided, that "the sitting member was not duly elected." Ib. 420. Ib. 446.

COUNTY OF THE CITY OF WORCESTER.

WORCESTER is said to owe its foundation as a city to a charter of Wolfarius, the 6th king of the Mercians. At the expiration of a century further privileges were granted by Offa, and subsequently by Edgar.

Green's Hist. of Worcester, v. 2, p. 32.

Ib. 33.

This place also received charters from Hen. I, Henry II, Rich. I, and John.

Ch. 45 Hen. 3.

Hen. III, by charter dated 30th of March 1251, incorporated the city of Worcester, placing the government of it in the hands of two bailiffs, (to be chosen out of a common council of twenty-four,) two aldermen, two chamberlains, and forty-eight assistants. Amongst other privileges conferred by this charter were the return of all writs, and the power to hold pleas. It also forbid any other sheriff or officer of the crown to enter into the city for the discharge of his office, unless either the citizens or their bailiffs had made default.

Return of writs.

This charter was confirmed by those of 4th Ed. I, 6th Ed. II, and 4th Ed. III, who, in the last year of his reign, also granted a second charter of confirmation, and again increased the privi-

leges of the citizens by empowering the justices of the peace and assize to hold their sessions within the walls of the city, and exempting the citizens from being called upon to answer for any thing done or arising within the walls elsewhere than within the walls of the city. Ch. 4 Ed. 3.

Rich. II. confirmed this charter in the 1st year of his reign; and by another, bearing date 29th March 1396, enlarged the privileges of the city, granting to the citizens all deodands and fines, &c. arising within the city, with power to hold pleas of land, assize, &c. before their bailiffs, &c.; also to take recognizances, &c. This charter also was confirmed by others, granted 1st Hen. IV, 1st Hen. V, and 1st Hen. VI. This city likewise received charters from Hen. VII, Hen. VIII, and Ed. VI. Ch. 19 R. 2.

The next and most important charter was granted by Jac. I, 2d October 1621, by which the government of the city was taken from the bailiffs and transferred to a mayor; also the city was separated from the county of Worcester, and made a distinct county, as follows: Ch. 19 Jac. 1.

"Et ulterius pro melioratione ejusdem civitatis et pro diversis aliis bonis causis et considerationibus nos ad presens specialiter movens de uberiori gratia nostra speciali ac ex certa scientia et mero motu nostris volumus ac per presentes pro nob. heræd. et successor. nost. ordinamus constituimus et concedimus quod præd. civitas nostra Wigorn. ac libertat. ejusdem ac omnia et singula dom. A county of itself.

Ch. 19 Jac. 1.

ædificia ter. aqu. et aquar. cursus solu. et fundum situat. jacen. et existen. infra civitat. præd. ac libertat. ejusdem de cetero in perpetuum sint et erunt unus comitat. per se ac de se distinctus et penitus separatus a comitat. nostro. Wigorn. et ab omnibus aliis comitatibus nostris quibuscumque infra regnum nost. Angliæ et non parcell. ipsius comitat. Wigorn. et per nomen comitat. civitat. Wigorn. imperpetuum appellatur et nuncupatur (*a*)." Then follows a saving of liberty to the justices of assize and of the peace for the county of Worcester, to hold the assizes and sessions for the county of Worcester within the county of the city (*b*).

(*a*) The account of these charters is, for the most part, taken from Green's History of Worcester, but this extract from a copy in the Exchequer office.

(*b*) "In the charter of Jac. I. a reserving clause is provided, whereby the justices of the county of Worcester are empowered to enter the city, although become a county of itself, and therein to hold their sessions as before. In 1730, the magistracy of the city refusing the county justices the use of the guildhall for the above purpose, a lawsuit was commenced against them by the latter, and considerable progress was made towards bringing the matter to trial. This disagreement was however prudently closed by an order of the corporation, dated 11th October 1731, communicated to Henry Townshend, Esq. chairman of the sessions, and Mr. Richard Wolley, clerk of the peace, conceding the privilege in its fullest extent, without prejudice to the right on either side, signed Benjamin Lane, mayor; since which period the quarter sessions for the county are regularly holden in the guildhall at Worcester."—Green's Hist. of Worcester, v. 2, p. 7, in notis.

The charter then incorporates the citizens by the name of the mayor, aldermen and citizens of the city of Worcester, giving them power to hold and demise land, &c.; to plead and be impleaded, &c.; and grants them a common seal. Further, that there should be one mayor, six aldermen, one sheriff, two chamberlains, and twenty-four citizens, of whom the mayor and aldermen to be seven, to be called capital citizens and counsellors, and forty-eight capital citizens, of whom the chamberlains for the time being shall be two; and vests the government of the city in the body of twenty-four and forty-eight. The charter then appoints the first mayor, aldermen, sheriff, chamberlains, and bodies of twenty-four and forty-eight, by name, provides for the holding of courts and convocations at their guildhall, and the making of bye-laws; also directs in what manner the mayor, aldermen, sheriff, chamberlains, recorder, common clerk, coroner, escheator, sword bearer and serjeant at mace, are to be elected, of which it will be sufficient for the present purpose to observe, that the electors are in every instance limited to the citizens. It, however, should be stated, that whilst the other officers are treated as corporate officers only, that the sheriff, coroners and escheators are directed, (*i. e.* the sheriff,) "to have the custody of the county of the city aforesaid," and each to discharge, within the county of the city, all matters and things relating to their respective offices, in as ample a manner as similar officers in any other

Ch. 19 Jac. 1.

Incorporated.

Body corporate.

Election of corporate officers.

Sheriff.

Ch. 19 Jac. 1.

county. This charter next regulates how and when the sword and mace should be carried in the county and city: gives the mayor, &c. power to fine those who refuse to bear corporate offices: regulates the elections of the body of forty-eight; and the mode in which all corporate officers should be sworn: empowers the mayor, aldermen and recorder to hold a court of record on Mondays; and to hear, determine, and have cognizance of all pleas, &c. It then makes the mayor, aldermen and recorder for the time being, or any two or more of them, whereof the mayor or recorder for the time being to be one, justices of the peace within the county of the city, with as ample power as other justices of the peace; and requires the coroners of the county of the city to return all juries, &c.; and that the sheriff and escheator should take their respective oaths before the mayor, who should certify the same, under the common seal, into Chancery. It also requires the sheriff to keep a county court, with the usual powers; and orders that all writs, &c. should be directed to the sheriff of the county of the city, which ought to have been directed to the sheriff of Worcestershire if the same city, and the precincts of the same, had not been made an entire county of and by itself: empowers the mayor, &c. to have a gaol for the county of the city, and makes the sheriff for the time being the keeper of the same, and enables the mayor, &c. to purchase land, &c. It then grants and confirms "to

Justices of the peace.

County court.

Return of writs.

Gaol.

Ch. 19 Jac. 1.

Reservation of privileges.

the said mayor, aldermen and citizens of the said city, and to their successors, all and singular, the same, such and the like libertys, franchises, exemptions, quietancies, immunitys, privileges, rights, jurisdictions, fairs, markets, tolls, customs, goods and chattells of felons and fugitives, wayfs, estrays, escheats, fines, amercements, issues, forfeitures, lands, tenements, soils, commons, void ground, perprestures, aprovements, and all and other hereditaments whatsoever, as many, such, and which the mayor, aldermen and citizens of the said city now have, hold, use, enjoy, or which the burgesses of the town of Worcester, or the citizens of the city of Worcester, or the bailiffs of the city of Worcester, or the bailiffs and citizens of the city of Worcester, or bailiffs and burgesses of the same city, or the bailiffs, aldermen and chamberlains, and citizens of the city of Worcester, or any other by what name or names, or by whatsoever incorporation, or any pretence of any incorporation, or by any lawful prescription before this time, have held or used to enjoy, or ought to have held and enjoyed by reason or pretence of any letters patents by us, or any of our progenitors or ancestors, kings or queens of England, by any means heretofore made, confirmed or granted, or by any lawful means, right, title, use or prescription had and used, although the same, or any of them, heretofore were not used, or was or were abused, evil used or discontinued; and although the same, or any

Ch. 19 Jac. 1.

of them, was or were forfeited or lost. To have, hold and enjoy unto the same mayor, aldermen and citizens of the city aforesaid, and to their successors, for ever."

The charter also reserves to the bishop, &c. their former privileges, as follows: "And, by these presents, we will and declare that these our letters patents, or any thing in the same contained, shall in no wise extend or be extended to the loss or prejudice of the bishop of Worcester for the time being, or his successors, or of the dean and chapter of the cathedral church of Christ, and the blessed Mary the Virgin, of Worcester, and their successors; but the said bishop and dean and chapter, and their successors, and their men, tenants and servants respectively, shall be as free from the power, government and authority of the officers of the said city, as if these present patents had not been made, and that they and every of them shall have, hold and enjoy, and use all libertys, grants and free customs, by them or their predecessors, or other their men, tenants and servants, heretofore respectively had, taken and used, as well, quietly and peaceably they have, had, holden, used and enjoyed, and in such and as ample manner and form as they, or any of them, have had, ought to have had, used or enjoyed, if these our letters patents had not been made," &c.

Reservation of privileges to the bishop, dean and chapter.

The municipal government of Worcester is vested in "a mayor, six aldermen, who are jus-

Municipal government.

tices of the peace, (that are chosen of twenty-one common councilmen,) a sheriff, and forty-eight assistants, also a recorder, town clerk, and other officers."

Justices of the peace.

The lord lieutenant of Worcestershire is also appointed for the county of the city of Worcester.

Lord lieutenant.

The returning officer is the sheriff.

Returning officer.

This city first sent members to parliament 23d Ed. I, and the right of election, as settled by a resolution of the House, is in "the citizens of the said city not receiving alms, and admitted to their freedom by birth or servitude, or by redemption, in order to trade within the said city."

Right of election.

Journ. v. 25, p. 510, col. 1.

Freeholds situate within the county of the city do not confer votes for the county of Worcester.

In 1747 a petition was presented against the return of Mr. Winford, when the petitioners "stated the right of electing citizens to serve in parliament for the said city to be in the citizens of the said city, not receiving alms, and admitted to their freedom by birth or servitude, or by redemption, in order to trade within the said city."

Journals, v. 25, p. 509-10.

For Mr. Winford it was contended, that "the right was in the freemen of the said city not receiving alms."

The House resolved, "That the right of election of citizens to serve in parliament for the city of Worcester is in the citizens of the said city not receiving alms, and admitted to their freedom by

Petition, 1747. birth or servitude, or by redemption, in order to trade within the said city."

Upon this occasion, the charter of 17th March, 11th Hen. III, was produced in evidence, and many entries from the books of the corporation; but no notice was taken either of the charter of Jac. I, the circumstance of Worcester being a county of itself, or of the freeholders.

COUNTY OF THE CITY OF YORK.

THE county of the city of York consists of the city of York, and the district of Ainsty, which was annexed to it by letters patent 27th Hen. VI.

I shall, in the first instance, give a short sketch of the history of York, subsequently of that of the Ainsty, and then show in what manner they became connected, and in what particulars they have remained distinct.

Without entering upon the earlier or less certain accounts of this city, it may suffice to observe, that it appears in the list of the twenty-eight principal cities of the Britons, in the year 450; that, during the Heptarchy, it was the capital of the Northumbrian kingdom, subsequently that of the earldom of Northumberland; and in the time of Edward the Confessor, when that earldom was divided into several distinct counties, remained the metropolis of that portion which forms the present county of York.

Drake Hist. York, 85.

Charters were granted to York by Hen. I, Hen. II, and R. I, the substance of which is embodied in the following charter of king John (*a*),

Ch. Hen. 1, Hen. 2, R. 1, & 1 John.

(*a*) I have given this charter upon the authority of Drake, and am informed it is not now to be found among the city

Ch. 1 John.

intituled, "Confirmatio [cartarum] civium Eboraci Johannes, &c. Sciatis nos concessisse civibus nostris de Eboraco omnes libertates et leges, et consuetudines suas, et nominatim gildam suam mercariam et hausas suas in Anglia et Normannia, et lestagia sua per totam costam maris quieta, sicut ea unquam melius et liberius habuerunt tempore regis Henrici avi patris nostri. Et volumus et firmiter precipimus quod predictas libertates et consuetudines habeant et teneant, cum omnibus libertatibus predicte gilde sue et hausis suis pertinentibus, ita bene et in pace, libere et quiete, sicut unquam melius, liberius et quietius habuerunt et tenuerunt tempore predicti regis Henrici patris nostri, sicut carta ejusdem patris nostri, et carta regis Ricardi fratris nostri rationabiliter testantur. Præterea sciatis nos dedisse concessisse, et presenti carta confirmasse, omnibus civibus nostris Eboraci quietanciam cujuslibet thelonii, et lastagie, et de murec. pontagii passagii, et de trespass et de omnibus custumis per totam Angliam, et Normanniam et Aquitaniam et Andigaviam et Pictaviam et per omnes portas et costas maris Angliæ et Norman-

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records; but the original charters of Hen. II. & R. I. are still remaining among the corporation records, and correspond, in substance, with the recital in that of John. I am indebted for this and other information respecting the charters granted to York, also for the extracts hereafter given from those of R. II. & Ed. IV, to Messrs. Townend and Bayldon, of York.

niæ et Aquitaniæ, et Andigaviæ, et Pictaviæ. Quare volumus et firmiter precipimus quod inde sint quieti, et prohibemus ne quis eos super hæc disturbet super decem librarum forisfactura, sicut carta Richardi regis fratris nostri rationabiliter testatur. Testibus," &c.

Ch. 1 John.

Drake, 203.

In 1251, Hen. III. confirmed the charters of Ric. I. and John. Charters also were subsequently granted by this king and Ed. I. & II, conveying the following privileges:—That none of the citizens should be sued before any justice, without the city, for lands, &c. within the same, but before the mayor and bailiffs; nor convicted by foreigners, but only by their fellow citizens, except the matter concerned the commonalty; nor to answer before any justices of assize at York, for any land, trespass, &c. within the liberty, save in their guildhall. That the citizens should hold the city, with all their liberties, &c. as hitherto they have reasonably used; and that their goods should be free throughout the kingdom from arrest for debt, except in cases where they have been sureties, or principal debtors. That all justices, &c. should take notice of these letters patent, on being produced by the citizens. The citizens also were exempted from murage, &c. throughout the realm, from serving on any assizes or juries without the city, for lands, &c. within the city and suburbs, &c. and were empowered to have an assize of bread, and all things belonging to the office of clerk of the market, to the exclusion of the clerk of the market of the

Ch. 36 Hen. 3.

Ch. 40 Hen. 3.

Ch. 46 Hen. 3.

Ch. 5 Ed. 2.

Ch. 10 Ed. 2.

Ch. 10. Ed. 2.

Mayor, &c. to have cognizance of pleas.

king, &c. and all profits arising therefrom, in aid of their fee-farm rent; also the mayor and bailiffs to have cognizance of pleas, &c. together with a confirmation of former privileges.

Ch. 19 R. 2.

Power to purchase lands.

Cognizance of pleas.

Justices of the county excluded from the city.

The next charter is that of 19 R. II, which granted to the mayor and citizens of the city of York, power to purchase lands, &c.; cognizance of all pleas, and of assize of novel disseisin, &c.; and that the justices of the peace for the three ridings of the county of York, should not intermeddle with the city, or suburbs, or liberties of the same; and that the mayor and twelve aldermen should hear and determine all felonies, trespasses, &c. happening within the city, &c.

City of York made a county of itself.

This charter also made the city a county of itself, in the following terms:—"De gratia nostra speciali ac ex deliberatione et assensu consilii nostri concessimus et hac carta nostra confirmavimus pro nobis et heredibus nostris præfatis civibus et eorum heredibus et successoribus imperpetuum quod dicta civitas Ebor. cum suburbiis suis ac procinctu eorundem juxta fines et bundas prout limitantur quæ infra corpus comitatus Ebor. jam existunt et continentur ab eodem comitatu separata sint ex nunc penitus in omnibus et exempta tam per terram quam per aquam. Et quod dicta civitas Ebor. ac suburbia ejusdem et eorum procinctus sint de cetero comitatus per se et comitatus civitatis Eboraci nuncupatur imperpetuum et quod dicti cives et eorum heredes et successores imperpetuum habeant infra civitatem prædictam et suburbia ejusdem ac eorum procinctum per fines et bundas prout limitata

existunt privilegia libertates et franchesias subscripta et eis et eorum quolibet plene gaudeant et utantur, viz. :— Ch. 19 R. 2.

The mayor for the time being to be escheator. Mayor to be escheator.

The citizens and commonalty, instead of three bailiffs, to have two sheriffs, to be chosen yearly out of themselves, to be sworn before the mayor, and their names returned under the common seal of the city into the Exchequer. Two sheriffs instead of three bailiffs.

The sheriffs to hold their county courts every month, on Mondays. County courts.

The escheator and sheriffs to account by attorney every year before the treasurer, and barons of the Exchequer. Escheator to account by attorney.

The steward, marshal, and clerk of the market of the king's household, excluded from the city and liberties thereof, and the coroners of the city to execute their office. Steward, marshal, and clerk of the market, excluded.

That the citizens should not be bound to obey the precepts or commands of constables, marshals, or admirals of England, or the keepers of the Marches towards Scotland, or any other officers or ministers, except those of the great and privy seal. Citizens exempt from the jurisdiction of the keepers of the Marches, &c.

That no foreign merchant, not being free of the city, should sell any merchandize therein.

By letters patent of 27 Hen. VI, the hundred, Hundred of Ainsty annexed to the county of the city of York (b).

(b) "That the hundred or wapontack of the Ancitty, with the appurtenances, in our county of our said city of York, be annexed and united to be parcel of the said county; and that the said suburbs of the city, precincts,

Ch. 2 Ed. 4.

or wapentake, of the Ainsty, with the appurtenances, was added to the county of the city

Also, by a charter of 2 Ed. IV, the mayor and aldermen of York are made justices of the peace for the hundred of Ainsty, &c. as follows:—

Mayor, &c. to be justices of peace, &c.

"Et quod major et aldermanni civitatis prædictæ et successores sui quatuor tres vel duo eorum quorum major qui pro tempore fuerit omnino sit unus sint justiciarii nostri sive custodes ad pacem infra hundredum sive wapentagium de Aynstieque comitatui civitatis nostræ prædictæ unit. et annex.

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hundred or weapontack, and every one of them, with their appurtenances, and every thing that is contained in them, and every of them, (except our castle of York, its towers and ditches pertaining to the castle of York), be of the county of the said city of York, as well by land as by water; and that all bayliffs of freeliges within the said county of the city of York, be attendant and obedient only to the precepts and commands of the sheriffs of the county of the city of York, and to no other sheriffs." Drake Hist. York, p. 206.—This passage is introduced by Mr. Drake, in his account of the city charters, immediately after the provisions of the charter of 19 R. II, and without a reference to any other charter, which would lead the reader to conclude that the Ainsty was then made part of the county of the city of York. The charters of R. II, in the possession of the corporation, do not contain any provision of this nature; neither was the Ainsty added to the county of the city till the 27th Hen. VI. to which it is probable Mr. Drake unintentionally omitted to refer; for immediately after the passage above alluded to, Mr. Drake introduces in a similar way, and without a reference, one of the provisions contained in a charter of Ed. IV. And see Mr. Drake's observations on p. 381, *in his Appendix*, p. 63.

est conservand. et ad omnes felonias, transgressiones, causas et materias ac alia malefacta quæcumque tam infra hundredum sive wapentagium prædictum quam alibi infra comitatum civitatis prædictæ audiend. et terminand. prout alii custodes pacis infra aliquem comitatem regni nostri Angliæ," &c. &c. Ch. 2 Ed. 4.

Hen. VII. and Hen. VIII. granted charters, making several corporate regulations, &c.; and so also did Queen Elizabeth, which, together with the proceedings respecting the charters during the reign of Car. II. and Jac. II. it is not necessary to take further notice. Ch. Hen. 7 & 8. Ch. Eliz. Ch. Car. 2. Jac. 2.

I now proceed to the history of the district of Ainsty. Ainsty, Hist. of.

Ainsty, or Ancitty, is a district of considerable extent, situate on the west side of the city of York, containing thirty-five towns or hamlets, and formerly was a hundred, or wapentake, of the west riding of the county of York. In early times the whole of this district was a forest, but was disforested by the charters of R. I. and John, the first of which was granted 5 R. I, when the wapentake of Ainsty paid 19 *l.* 0 *s.* 11 *d.* "pro habenda quietancia forestiæ per cartam domini regis, et quod non sit amplius in foresta." The second charter was granted 10 John, on which occasion the men of the wapentake of Ainsty paid a fine of 120 marks, and three palfreys, "ut ipsi et hæredes eorum sint quieti de forestagio; et ut totum illud wapentac sit quietum de omni fores- Drake, 381—2. Mad. Exch. 274. Ib. 282.

Ainsty, Hist. of. tagio; et ut illud cum omnibus pertinentibus suis sit extra forestam." The city of York appears, at an early period, to have laid claim to, or desired to obtain possession of, this district; as in the 4th Ed. I. the citizens were called upon, by Drake, 381. *quo warranto*, to show upon what authority they held the wapentake of the Ainsty; and again, in the 8th of the same king, they appear to have laid claim to it, as granted to them by a charter of king John (*c*).

(*c*) Mr. Drake gives a copy of the following charter of restitution, dated 20th Nov. 9 Ed. 1, by which the privileges of the city then seized by the crown for non-payment of the fee-farm rent, were restored; and the wapentake of Ainsty is mentioned as claimed by and granted to the citizens of York, as follows:—

"Rex dilecto suo Johanni de Lithegraynes vicecom. Ebor. et custodi civitatis suæ Ebor. salutem. Sciatis quod de gratia nostra speciali reddidimus civibus nostris *Ebor.* majoritatem ejusdem ville cum villa et libertate ejusdem, cum pertinentiis que nuper capte fuerint in manum nostram per considerationem curie nostre tanquam forisfacte, habend. et tenend. eisdem civibus eodem modo et cum eisdem libertatibus et pertinentiis, quo eas habuerunt ante predictam captionem earundum in manum nost. ita quod de firma debita et aliis que ad nos pertinent. ibidem de cetero respondeas per annum, sicut prius fieri consuevit. *Commisimus etiam eisdem civibus Wapontack de Aynesty* cum pertinentiis, *quod clamant pertinere* ad civitatem predict. tenend. usque ad festum Ascensionis Domini proxime futurum, et tunc eis inde scire faciamus voluntatem nostram. Et ideo vobis mandamus quod eisdem civibus predictas majoritatem villam et libertatem tenend. in forma predicta. Et eis predictum *wapontack* tenend. sicut predict. est una cum omnibus de

Ainsty, Hist. of.

In 1449, the mayor and citizens of York petitioned Hen. VI. to annex the Ainsty to their county; in consequence of which, he granted letters patent to the following effect:—

Let. pat. annexing Ainsty to York, 27 Hen. 6.

"Rex omnibus, &c. Sciatis quod per quandam supplicationem per dilectos et fideles nostros majorem et cives civitatis nostri Eboraci nobis presentatem intelleximus, qualiter eadem civitas suburbia et procinctus ejusdem unus comitatus per se, a comitatu nostro Eboraci divisus et separatus, existit, ac comitatus civitatis nostræ Eboraci nuncupatur, prout tam per literas patentes domini R. nuper regis Angliæ secundi post conquestum progenitoris nostri quam per alias separales literas patentes et confirmationes per dominum H. nuper regem Angliæ avum nostrum, ac per carissimum dominum et patrem nostrum regem defunctum et literas nostras patentes tempore nostro superinde confectas, de recordo plenius apparet; qualiter etiam hundredum sive wapentagium de Aynsty prædictæ civitati nostræ est adjacens, ac major et cives ejusdem civitatis de et in hundredo sive wapentagio prædicto ballivi existunt, et omnimoda blodwytes amerciamenta fines assisas panis et cervisiæ waifes et estraias inde habent et percipiunt; ac qualiter quilibet major civitatis nostræ prædictæ pro tempore existens, virtute dictarum concessionum et confirmationum

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predictis villa et wapontack a festo S. Michaelis proxime preterito perceptis. In cujus rei," &c. Drake, App. 62.

Let. pat. 27 Hen. 6.

escéator infra civitatem prædictam ac suburbia et procinctus ejusdem, ac nobis in saccario nostro computabiles fuit est et esse debet; ac etiam qualiter nos per literas nostras patentes per certum terminum annorum duraturas concessimus majori et civibus prædictis in auxilium civitatis prædictæ claudendæ, pro securitate et tuitione ejusdem ac parcium eidem adjacentium, certas custumas de rebus venalibus in et ad civitatem prædictam venientibus vendendis colligendas et levandas." [Here follow the different duties, &c. payable.] "Ita quod denarii inde provenientes circa clausuram civitatis prædictæ, et non ad alios usus, ponantur et convertantur, prout per literas nostras prædictas plenius apparet de recordo." Nos præmissa considerantes ac qualiter civitas nostra prædicta nimio graviter est onerata solvendo nobis annuatim quandam magnam et notabilem feodi firmam, ac taxas et alia onera, ac de præsens diminuta et inde casu existit, et a tempore longinquo per præsentium nostrum curiam consilia seu parliamenta nostra minime fuit confortata auxiliata sive relevata, de gratia nostra speciali concessimus præfatis majori et civibus ac eorum successoribus, absque aliquo fine seu feodo ad opus nostrum solvendo, quod hundredum sive wapentagium prædictum cum pertinentiis comitatui nostro dictæ civitatis Eboraci annexetur et uniatur, ac sit parcella ejusdem comitatus, et quod dicta civitas suburbia et procinctus, hundredum sive wapentagium, et eorum quodlibet

cum pertinentiis suis, ac omne id quod in eisdem et eorum quolibet continetur, excepto castro nostro Eboraci turribus fossis et fossatis eidem castro pertinentibus, sint comitatus prædictæ civitatis Eboraci, separatus et divisus a comitatu nostro Eboraci, tam per terram quam per aquam, et quod omnes ballivi franchesiarum infra dictum comitatum ejusdem civitatis Eboraci sint attendentes et obedientes solum modo præceptis et mandatis vicecomitum ejusdem comitatus dictæ civitatis Eboraci et non aliorum vicecomitum, et quod major et cives prædicti habeant occupent et possideant prædictum hundredum sive wapentagium cum pertinentiis, privilegiatum et franchesiatum ac eis utantur et gaudeant plene et integre ut parcella dicti comitatus dictæ civitatis Eboraci, et quod omnes vicecomites comitatus civitatis Eboraci pro tempore existentes, habeant plenam potestatem jurisdictionem et authoritatem, infra dictum hundredum sive wapentagium, prout ipsi infra comitatum nostrum civitatis Eboraci prædictæ habuerunt et habere consueverunt. Et ulterius de habundanti gratia nostra concessimus majori et civibus prædictis et eorum successoribus, in relevamen civitatis prædictæ, omnimoda bona et catalla felonum, fugitivorum, &c. infra dictum comitatum prædictæ civitatis Eboraci in futuro contingentia, absque aliquo compoto sive aliquo alio inde nobis heredibus sive successoribus nostris reddendo. Necnon de ampliori gratia nostra concessimus majori et civibus prædictis et eorum

Let. pat. 27 Hen. 6.

Let. pat. 27 Hen. 6.

Reservation of all former privileges.

successoribus imperpetuum omnes et singulas custumas prædictas, &c. &c. ad clausurum et supportationem murorum civitatis prædictæ; salvis semper ecclesiæ Eboraci, quæ de fundatione progenitorum nostrorum, ac nostro patronatu existit, ac archiepiscopo decano et capitulo ejusdem pro tempore existentibus, ac eorum cuilibet et cuicumque alii communitati spirituali et temporali et cuicumque alii personæ singulari, omnimodis franchesis privilegiis juribus commoditatibus et custumis eis seu alicui eorum de jure pertinentibus; ita quod per præsentem concessionem nostrum, nullum prejudicium eis seu eorum alicui, in possessione seu proprietate juris aliquorum libertatum franchesiarum privilegiorum, jurium commoditatum sive custumarum, unde ad præsens seisiti sive possessionati existunt, seu quæ eis pertinent, fiat quovismodo. Eo quod expressa mentio de vero valore, sive annuo valore, rerum in præsentibus specificatarum, aut aliorum donorum sive concessionum per nos aut aliquem progenitorum nostrorum majori et civibus prædictis seu eorum prædecessoribus, ante hæc tempora factorum, in præsentibus habita non existit, aut aliquo statuto actu ordinatione, restrictione appunctuamento, sive alia re quacumque, in contrarium facta, non obstante. In cujus, &c. Teste apud West. 11 Feb. 27 Hen. VI, Rot. 15."

Drake, 382.

In 1661 the validity and extent of these letters patent must have been investigated and confirmed, as in that year the citizens presented

a petition to Lord Clarendon, who was then Lord Chancellor, which, setting forth the before-recited charter of 27 Hen. VI, complained that certain persons, who were not free of the city, had been put in the commission of the peace for the wapentake of Ainsty, which they stated was in violation of their privileges under that charter, and prayed that such commissions should be superseded. The chancellor consented to go into the inquiry; and the result was, that the commissions were superseded.

Petition to L. Clarendon.

The lord lieutenant of the West Riding of Yorkshire is appointed also for the county of the city of York.

Lord lieutenant.

The municipal government consists of the lord mayor, recorder, two city council, and twelve aldermen, all of whom are justices of the peace, two sheriffs, those who have served the office of sheriff, called the gentlemen of the twenty-four, a town clerk, six chamberlains, and seventy-two common councilmen, and other inferior officers.

Municipal government.

The sheriffs are the returning officers.

Returning officers.

The right of election is in the corporation and citizens.

Right of voting.

Freeholds situate within that part of the county of the city of York, called the city of York, do not confer votes for the county of York, but only those which are within the district of Ainsty (*d*).

(*d*) The Ainsty is now very commonly called "The County of the City of York," in distinction from "the

Returns.

Drake, 355. Carew, pt. 2, 279, c. 2, 4th Reg. 972. Return, 2 Hen. 5.

York, according to Drake, first returned members 23 Ed. I.; but, according to Prynne and Carew, 26 Ed. I.

By a return of the date of 2 H. V, it appears that the elections were then made in the county court, the sheriffs presiding, and the mayor and citizens electing, as follows:—

"Hæc indentura facta in pleno com. civitatis Ebor. tent. ibidem die Lunæ prox. ante festum Omnium Sanctorum, anno regni regis Henrici quinti; post conquestum Angliæ secundo. Inter Willielmum Ormshened, et Ricardum Spencer, vic. civitatis Eborum, ex una parte.

Thoman de Stanton, majorem civitatis prædict. Nichum Blackburn, (and twelve others mentioned by name), concives civitatis prædict. ex parte altera; testatur quod proclamatione facta per dictos vic. virtute cujusdam brevis de parliamento domini regis apud Westm. tenend. in octabis Sancti Martini prox. futur. post dat. præsent. eisdem vicecomitibus inde direct. prædicti major et concives in com. prædicto tunc existentes, et plenam potestatem de tota communitate civitatis prædict. habentes unanimi assensu et voluntate libere et indifferentur eligerunt duos cives idoneos et discretos

City of York." The style of the whole district, as used by the clerk of assize, is "The County of the City of York." In the sessions processes two styles are in use, viz. "City of York," in those issued into and relating exclusively to the city; and "City of York, and County of the same City," or "County of the City of York," in such as are issued into the Ainsty separately, or into both united.

de com. civitatis prædictæ, viz. Robertum Howen et Johannem Northeby, ad essend. ad parliamentum prædictum die et loco prædictis pro communitate com. prædict. ad faciendum quod dictum breve in se requirit secundum formam ejusdem. In cujus rei testimonium," &c.

Return, 2 H. 5.

Carew, pt. 2, 279.

The effect of the letters patent of 27 Hen. VI, separating the district of Ainsty from the county of York, and adding it to the county of the city, was also considered upon the hearing of the petition presented by Sir Rowland Winn, in 1735, against the return of Sir Miles Stapylton for the county of York; upon which occasion the House determined, that the freeholders of the Ainsty had votes for Yorkshire.

Petition, 1735.

Journals, 1735, v. 22, p 622.

The following is the report of the proceedings on the petition:—

"The House proceeded, according to order, to the further hearing the matters of the several petitions, complaining of an undue election and return for the county of York.

9 March 1735.

"And the counsel were called in.

"And the counsel for the petitioner, Sir Rowland Winn, bart. and the other petitioners, whose petition complains of an undue election and return of Sir Miles Stapylton, bart. for the said county, having proposed to disqualify Wm. Stothard, who voted for the said sitting member at the said election, in right of a freehold at Acomb, in the hundred, or wapentake, of Ainsty, within the county of the city of York; and having examined

Petition, 1735.

a witness, in order to prove that Acomb is within the said hundred, or wapentake, and that the said hundred, or wapentake, is within the county of the said city; and having examined the said witness concerning the usage of voting for freeholds lying in the said hundred, or wapentake, at the election of knights of the shire for the county of York; and having proposed to disqualify several other persons who voted for the said sitting member in right of such freeholds;

"The counsel for the said sitting member were heard in answer to the evidence of that disqualification.

"And a copy of the record of the letters patent, granted by king Henry VI. the 11th day of February, in the 27th year of his reign, to the mayor and citizens of the city of York, was produced and read; reciting, That the said city, the suburbs and precincts thereof, was then a county by itself, divided and separated from the county of York, and called the county of the city of York; and that the mayor and citizens of the said city were bailiffs of, and in the hundred, or wapentake, of Ainsty; and granting to them, and their successors, that the said hundred, or wapentake, with the appurtenances, should be annexed and united to the county of the said city, and be parcel thereof; and that the said city, suburbs and precinct, hundred or wapentake, and each of them, with their appurtenances, and every thing in them, and each of them, contained, except the castle of York, the towers, fosses and

ditches, to the said castle belonging, be the county of the said city, separated and divided from the county of York; saving always to the church of York, and the archbishop, dean and chapter thereof, and every other community, spiritual and temporal, and all and singular other persons, all kind of franchises, privileges, rights, commodities and customs, to them, or any of them, of right belonging. Petition, 1735.

"And the counsel for the said petitioners being heard by way of reply,

"The counsel were directed to withdraw.

"Resolved, That persons, whose freeholds lie within that part of the county of the city of York which is commonly called the Ainsty, have a right to vote for knights of the shire for the county of York." Resolution.

The cause and effect of this decision may be collected from the following extracts from Mr. Drake's History of York:—

"It is very particular, that the inhabitants of this district, (*i. e.* the Ainsty), are not represented at all in parliament; their being annexed to the city did not make them capable of voting at any election of members in it; and their being cut off from the county deprives them from being freeholders of it at large. The inhabitants, however, vote for the members of the county, but are always taken with a query against their names, that if the matter should come to be contested in the House, they might be admitted, or rejected, as Drake, p. 382.

Petition, 1735.

the House was in the humour to allow it." Such is the account given by Mr. Drake in the body of his work, which was written before the resolution of the House of Commons in 1735. The following are his observations, accompanying the insertion of the proceedings on Sir Rowland Winn's petition in the Appendix.

Drake, Appendix, p. 63.

"P. 382, sect. 5. It is very particular, that the inhabitants of this district are not represented at all in Parliament," &c.

"Since this sheet passed the press, as I said before, the contest on the petition relating to the last election, for knights of the shire for the county of York, has occasioned this matter to be debated before the House of Commons; and a copy of the record of the patent of annexation of the district of Ainsty to the city of York, by king Hen. VI, being produced and read, *which has a strong saving clause at the end of it*, a resolution of allowing the votes of freeholders of this wapentake to be good, was agreed unto by the House, without a division. The author of this work had the honour to carry in the copy of the record, and vouch it in the House, which saved a debate of some hours, and perfectly settled the right of these freeholders for the future voting at the county election."

A

REPORT

OF THE

PROCEEDINGS BEFORE THE COMMITTEE,

APPOINTED MAY 8, 1821,

TO TRY THE MERITS OF THE ELECTION MADE

FOR THE COUNTY OF

WARWICK,

On the 7th of November 1820.

WARWICK COUNTY ELECTION CASE.

THE Committee was chosen on Tuesday, May 8, 1821, and consisted of the following Members:

Marquis of Titchfield, Chairman,

Lord James Townshend,
Hon. H. C. Lowther,
William Gossett, Esq.
Sir Montague Cholmeley,
Geo. Watson Taylor, Esq.
Joseph Pitt, Esq.
Sir Charles Hulse,
Sir Joseph Yorke,
Lord Barnard,
John Ramsbottom, Esq.
Rob. Bransby Cooper, Esq.
W. H. Scourfield, Esq.
Sir James Mackintosh, for the Petitioners, } Nominees.
Thos. Frankland Lewis, Esq. for the Sitting Member, } Nominees.

Petitioners:—1. Richard Spooner, Esq.; 2. Electors.

Sitting Member:—Francis Lawley, Esq.

Counsel for the Petitioners:—Mr. W. E. Taunton and Mr. Pearson.

Counsel for the Sitting Member:—Mr. Harrison and Mr. U. Corbett.

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*THE Petition of Mr. Spooner complained, that, at the last election of a member to serve in Parliament for the county of Warwick, the sheriff refused the votes of divers freeholders of the said county, who had a right to vote at the said election, and who tendered to

* This report of the proceedings before the committee is taken and abridged from the transcript of the short-hand writer's notes, published in 1821 by Mr. Unett, the agent for the sitting member.

Petition.

vote for him, and that by these means a colourable majority appeared on the poll in favour of Mr. Lawley, in consequence of which he was illegally returned; and prayed that the name of Mr. Lawley might be erased from the said return, and that his own might be inserted therein.

The petition of the freeholders was to the same effect.

It being admitted that the only point for the consideration of the committee was, whether persons possessing freeholds within the county of the city of Coventry were entitled, in right of such freeholds, to vote at the election of knights for the county of Warwick, it was agreed that this question should be raised upon the tender* of Joseph Sowden, who claimed to vote for Mr. Spooner in right of a freehold situate within the county of the city of Coventry.

Petitioners Evidence.

The poll having been produced, the following documents were put in, to show that Coventry and the adjacent hamlets, before they were made a distinct county by the charter of the 30th Hen. VI, formed part of the county of Warwick:—

Domesday-book.

A passage from Domesday-book, in which Coventry, Foleshill and Ainsty, are enumerated as part of the possessions of the Countess Godiva, *in the county of Warwick.*

* At the election, a Coventry freeholder having tendered to vote for Mr. Spooner, the admissibility of his vote was argued by counsel before the assessor, who decided not to admit it upon the poll, when it was agreed between the parties that all those persons who wished to tender their votes for freeholds situate within the county of Coventry, should have their tenders recorded, to enable them to obtain a decision of a committee of the House of Commons upon this point.

Petitioner's Evidence.

A writ, dated 26 Ed. I, directed to the sheriff of Warwickshire, requiring him to cause two knights to be returned to Parliament for the county, two citizens for every city, and two burgesses for every borough within his county, together with his return thereto, among others, of Robert Russell and Robert Kellie, as members elected to serve for the town of Coventry.

Writ, 26 Ed. 1.

A writ of a similar nature, bearing date 20 Ed. III, addressed to the sheriff of Warwickshire and Leicestershire, and his return thereto of John de Percy, as one of the burgesses of the borough of the town of Coventry, manucaptured by Nicholas Perry and others, burgesses of the said borough.

Writ, 20 Ed. 3.

A writ of the 26th August, 30 Hen. VI, directed to the *sheriff of Warwickshire*, requiring him to negotiate with the bishop of Lichfield and Coventry for the removal of an excommunication by him pronounced against Ralph de Leicester, rector of the church of St. Michael, in *Coventry*, and other persons who had assisted him, under the king's orders, in breaking into and taking possession of the said church of St. Michael, to which the said Ralph had been presented by the king.

Writ, 26 Hen. 6.

An inquisition *post mortem*, dated 1 Ed. III, finding that Hugh de Merynton died seized of lands *at Coventry, in the county of Warwick*.

Inquisition post mortem. 1 Ed. 3.

An inquisition *ad quod damnum*, bearing date 15 Ed. III, directed to the *escheator of the counties of Warwick*, Leicester, Derby and Lancaster, which was *executed at Coventry, in respect of lands there situate*.

Inquisition ad quod damnum. 15 Ed. 3.

Also an inquisition of the same nature, taken in the 21st year of Ed. III, *directed to the escheator in the county of Warwick*.

Inquisition ad quod damnum. 21 Ed. 3.

The return to a writ of *certiorari*, 15 Hen. VI, respecting lands belonging to one William de Clyfford, part of which were situated in Coventry.

Return to writ of certiorari. 15 Hen. 6.

Petitioner's evidence.

To prove that, previous to the charter of 30 Hen. VI, the freeholders of Coventry voted for and contributed to the wages of the knights of the shire for the county of Warwick, the following entry, of the date of 1426, (4 Hen. VI,) was read from a book produced from the muniment room of the corporation of Coventry, and which purported to contain a record of the proceedings of that corporation.

Entry in corporation books of Coventry, 4 Hen. 6. Knights wages.

"To have in mind, that on the vigil of the nativity of our Lady, that the persons there present, that is to say, (about sixty names were annexed) have ordered, that the knights expences for this year shall be paid by the wardens of this city, and not by the chamberlains: also they ordain, that the said knights expences, the 10*l.* that the mayor hath yearly, the fee of the cloak, shall hereafter be paid by the wardens, and not by the chamberlains *."

Returns of 31 Car. 2, and 1 & 3 Jac. 2.

To show that, subsequently to the charter of 30 Hen. VI, and whilst the law required that a voter must be resident in a county to be entitled to vote for its members, several persons, who were residents in Coventry, voted for the county of Warwick, returns of the knights of the shire for that county, dated 18th Aug. and 3d Feb. 31 Car. II, and 1 & 3 Jac. II, were produced from the petty-bag office, bearing the signatures of several persons, whom it was endeavoured, by the following evidence, to prove were resident in the

* In answer to a question from the committee, Mr. Carter stated, that the office of chamberlain was considered the highest; that he had the management of the Lammas ground within and surrounding the city of Coventry, upon which the cattle of the freemen are depastured; that the wardens had originally the management of the walls of the city, and that so long as they existed the wardens collected the murage money or rate, which was imposed for the maintenance of the walls.

Petitioners Evidence.

county of the city of Coventry at the time they signed such returns. For this purpose, Ralph Bingland, esq. Norroy king at arms, was called, who produced visitation books from the college of arms taken in 1682 and 1683, in which John Dugdale was described of the city of Coventry, and as a deputy lieutenant of the city and county of the same, which the petitioners proposed to connect with the signature of "Jo. Dugdale," to the return of 3d February, 31 Car. II. Similar evidence also was adduced to connect Sir Thomas Norton with the signature of "Thos. Norton," to the return of 1 Jac. II. The same attempt was made with respect to the signatures of Greene, Hopkins and Hale, but failed.

Signature of Jo. Dugdale.

Signature of Thos. Norton.

One Henry Greene having signed the return of the 18th August, 31 Car. II, the parish books of Wyken were next produced, to show that a person named Henry Greene was that year assessed to the parish rates; likewise a certificate of the burial of Henry Greene, in the same parish, in 1694 *.

Greene's signature.

As a proof that the county of the city of Coventry was originally included in the same land-tax assessment with Warwickshire, an examined copy of the duplicate of the land-tax assessment for the year 1693 was produced, which was entitled, "An account of the duplicates brought into their Majesties remembrancer's office for the first ayd of four shillings in the pound, how much every duplicate amounts unto, and the names of every division, hundred and place, in every county within England and Wales, being for the year 1693."

Land-tax assessments.

* The same course of evidence being pursued with respect to Sir Thomas Norton, the committee intimated that this line of evidence had been carried far enough.

Petitioners Evidence.

"Com. Warwick.

"Hundreds, and Towns, or Parishes. { 1693 } 4th William & Mary.

"City of Coventry," &c.

Then follow the names of the different component parts of the county of the city of Coventry.

Right of election for city of Coventry.

To show that the freeholders of Coventry do not participate with the freemen in the election of its members, the following resolution of the House of Commons was read:

"That the right of election of citizens to serve in Parliament for the city of Coventry, is in such freemen as have served seven years apprenticeship to one and the same trade in the said city, or suburbs thereof, and do not receive alms or weekly charity, such freemen being duly sworn in and enrolled."

Journals, Mar. 20, 1722, v. 20, p. 60.

Ainsty case.

To prove that a freehold has been considered to be situated in one county for certain purposes, and in another for that of the elective franchise, the resolution was read from the Journals, in which the House of Commons decided, that the freeholders of the Ainsty of York, although that district formed part of the county of the city of York, retained the right of voting at the elections of the knights of the shire for the county of York.

9 Mar. 1735, v. 22, p. 622.

To explain the mode in which Coventry, and other corporate counties were created, and the terms used in their respective charters for that purpose, extracts were read from a charter dated 9th March, 25 Hen. VI, separating the town of Southampton from Hampshire, and making it a county of itself; from one of the 23d January, 9 Eliz. creating the town of Poole a distinct county from that of Dorsetshire; from one bearing date 2d August, 1 Edw. IV. by which the city of Canterbury was made a distinct county from that of Kent;

Southampton.

Poole.

Canterbury.

also from that of the 30th of Hen. VI, creating Coventry a county of itself, together with the reservation of privileges contained in each charter*. It was also admitted on behalf of the sitting member, that the owners of freeholds, situated within the counties of Southampton, Poole and Canterbury, exercise the right of voting, in respect of such freeholds, at the election of knights of the shire for those counties from which these places had been respectively detached.

Petitioner's Evidence.

Coventry.

Admission by the sitting member.

It was also stated, that no land was held by copyhold tenure within the county of the city of Coventry, and that the manor of Cheylesmore and that of Coventry were distinct manors.

No copyhold land in Coventry.

The name of Joseph Sowden was then read from the poll, and it was admitted that he tendered to vote for Mr. Spooner in right of a freehold situate at Foleshill, within the county of the city of Coventry.

Joseph Sowden's tender.

The following is the substance of the evidence produced on the part of the sitting member:—

Sitting member's evidence.

To show the connection which, at a very early period, subsisted between the component parts of the present county of the city of Coventry, an inquisition *post mortem* of the 3d Edw. I. was put in, together with the return made thereto by Henry le Estur of Coventry, and others, by which the manor of Coventry, the messuage and park of Cheylesmore, and other property situate in the different hamlets, now composing part of the county of the city of Coventry, were extended as part of the possessions of the Lord Robert de Montalt, lately deceased, and therein described as being held of the said manor, which manor is also therein stated to be holden of the honour of Chester by knight's service.

State of Coventry prior to 30 Hen. 6.

Inquisition post mortem 3 Ed. 1.

To rebut the presumption that the freeholders of

Ch. 18 Ed. 3.

* All these clauses will be found in the preceding part of this work under the title of each place.

Sitting Member's Evidence.

Coventry did vote at the elections, or did contribute towards the expences of the knights of the shire for the county of Warwick, previous to the charter of 30th Hen. VI, that of the 18th Edw. III. was read, to show that previous to the 30th Hen. VI. the district thereby made the county of the city of Coventry was distinct from, and independant of the county of Warwick, having its own courts, and the return of writs, to the exclusion of the sheriff of Warwickshire, and which enabled the men and tenants of Coventry, and their heirs and successors, to have a commonalty among themselves, with power to choose yearly from among themselves a mayor and bailiffs, with power from thenceforth to hold pleas, as well of trespasses, contracts and agreements, as of all other things happening within the town; giving to the mayor power to take recognizances of debts, and to the mayor and bailiffs a prison, in which to have the charge and custody of all offenders taken for any cause within the town; also reserving to the king, his stewards, or the mayor and bailiffs of the town, the view of frankpledge arising within the manor of Cheylesmore and the town of Coventry; also the return of all writs, so that no sheriff, or bailiff, or other minister, should enter into the aforesaid liberty for the making or doing of executions, unless in default of the stewards, or of the mayor and bailiffs, or other persons for that purpose deputed. The same charter also reserved to the crown and its grantees the chattels of felons and fugitives, being tenants of the said manor, or residents within the said liberty.

Land-tax assessment.

It was proved that the land-tax assessments for the county of Coventry, were returned to and kept by the clerk of the peace for the county of the city.

Freeholders of Sow.

One part of the parish of Sow being in the county of Coventry, and the other in that of Warwick, the poll taken at a contested election for Warwickshire

in 1774, was put in, by which it appeared that those voters whose freeholds were situated in the parish of Sow, and who voted upon that occasion, were distinguished as being in that part of the parish which was in the county of Warwick.

Sitting Member's Evidence.

The following admissions were also made on the part of the petitioners:—

Admissions by the petitioners.

"That by charter of the 30th of Hen. VI. Coventry was separated from the county of Warwick, and made a county of itself; that it has a separate sheriff, is separately assessed to the county rates, which are not returned to the clerk of the peace of the county of Warwick, but to the clerk of the peace of the county of the city of Coventry; and that the inhabitants are not liable to serve on juries for the county of Warwick.

"That the following cities and towns have been separated from the parent counties at the times undermentioned, and that persons having freeholds therein do not vote for members for the parent counties, but for the cities and counties of the cities and towns themselves; viz. *

"Norwich, by a charter of the 5th of Hen. IV, 1403.

"Nottingham, by charter of the 27th of Hen. VI, 1449.

"Lichfield, by charter of the 1st of Mary, 1553.

"Haverfordwest, by charter of the 7th of Jac. I, 1610.

"Exeter, by charter of 29 Hen. VIII, 1538.

"Bristol, by charter of 47th of Edw. III, 1373.

"That the following cities and towns have been

* The material parts of these charters, and those subsequently mentioned, will be found in the preceding part of this work under the title of that place to which they have been granted.

Sitting Member's Evidence.

separated from the parent counties at the times undermentioned, and that persons having freeholds therein do not vote as freeholders, either for the parent counties, or the cities, or towns themselves; viz.

"York, by charter of 12 Rich. II, 1389.

"Gloucester, by charter of 1 Rich. III, 1483.

"Worcester, by charter of 19 Jac. I, 1622.

"Newcastle-upon-Tyne, by charter of 1 Hen. IV, 1399.

"Kingston-upon-Hull, by charter of the 18th Hen. VI, 1440."

Charters of other places.

To show that the charters of separation did not contain any provisions respecting the elective franchise, translations of the charters granted to Nottingham 27th Hen. VI, to Lichfield 1st of Mary, to Newcastle-upon-Tyne 1st Hen. IV, were put in; also of the charter granted to Coventry 30th Hen. VI.

Ante, p. 147.

Arguments of Counsel.

Argument for the petitioners.

The following is the substance of the arguments of counsel on behalf of the petitioners:—

It must be admitted that the persons who, on this occasion, claim to be freeholders of the county of Warwick, and complain of the rejection of their votes by the returning officer, are persons whose freeholds are locally situated in the county of the city of Coventry; and it is their purpose to satisfy the committee that the county of the city of Coventry, with respect to the elective franchise of those persons whose freeholds are situate within it, still forms part and parcel of the county of Warwick.

Conduct of the case.

It would have been sufficient in this case, in the first instance, to have shown that, at some antecedent period of time, those persons who possessed freeholds within the city of Coventry did vote at the election of knights for the county of Warwick, and to have left

it to the other side to prove how and when that right was destroyed. It, however, is best to open the case in all its bearings, therefore it is admitted that Hen. VI, in the 30th year of his reign, did grant a charter to the city of Coventry, since which period it has been reputed and denominated the county of the city of Coventry in formal instruments and public acts of parliament.

Argument for the Petitioners.

Ch. 30 Hen. 6.

It will be recollected that in the early ages the proprietors of free lands were of right accustomed to meet in the witenagemot or parliament of those times. No matter under what denomination they have been transmitted to us, whether that of thanes, or *liberi homines*, or at a later period of barons. To use a modern phrase, their lands entitled them to a seat, and it was thus that the free or liberal tenures were represented in the legislative assembly of the nation. When many of those who held by free tenure ceased to be summoned to parliament the land was still represented, partly by the proprietors in person, as by the lords of parliament, who, even at the present day, sit in virtue of their baronies, and partly by the knights of shires, delegated and elected for this purpose by the other freeholders. This is observed to show, that the right of sending representatives to parliament was not conferred on the freehold lands of England when the House of Commons was made a distinct body, but was an incident belonging to them from the earliest period of our history, and which has never been taken away by any act of the legislature.

Witenagemot.

The votes of the petitioners were rejected at the election, because the freeholds in right of which they claimed to vote were locally situate within the county of the city of Coventry, and not within that of Warwick. But it will be in evidence, that both before and after the charter of 30th Hen. VI, persons possessing

Votes of petitioners, why rejected.

Argument for the Petitioners.

freeholds within the city of Coventry exercised the right of voting at the election of members for the county of Warwick. Evidence also will be adduced to show, that previous to the charter of 30th Hen. VI. Coventry formed part of the county of Warwick; and if it is proved that Coventry never was the demesne land of the crown, nor frankalmoigne, nor copyhold, it follows as a necessary inference, that the owners of the lands in question must have stood upon the same footing as those of any other part of that county; consequently, the *onus* of proof lies with the sitting member to show in what manner those rights, which were once vested in the freeholders of Coventry, have been destroyed. That the freeholders of Coventry participated in the election of the knights for the county of Warwick, prior to the charter of 30th Hen. VI, is proved by an entry, dated the 4th Hen. VI, in the corporation books of Coventry, relative to the payment of the knights expences; as no doubt can exist but that the knights expences therein mentioned were the wages of the knights for the county of Warwick, to which the freeholders of Coventry were then bound to contribute, because a parliament was held that year, and the term knight being applicable to county members only, this entry could not have referred to those for the city of Coventry.

Coventry a county for some purposes.

It is conceded, that since the charter of 30th Hen. VI, and in consequence thereof, the city of Coventry has been called a county, and that for some purposes it has enjoyed the same privileges, and been subject to the same privations as other counties. It must however be observed, that a charter can be accepted only by those persons to whom it is addressed, and that one which is addressed to the corporate body only cannot be held to apply to freeholders who are not members of it. A charter is generally addressed

to the inhabitants of a particular place, constituting them burgesses or freemen, creating a corporate body, and establishing a municipal government; but there is no instance in which a charter has, in the slightest degree, interfered with the freehold rights of those persons whose freeholds lie within the place which is the object of it.

Argument for the Petitioners.

Admitting, therefore, that a charter must be taken for better and worse by those to whom it is addressed, and by whom it is accepted, no disability can attach to the freeholders of Coventry, who are not members of the corporation, because they are not mentioned in it. If the case were otherwise these freeholders would be completely disfranchised, as by the construction sought to be put upon the charter of 30th Hen. VI, they would be disfranchised from voting for Warwickshire, and by the resolution of the House of Commons, (which confines the right of election for Coventry to such freemen who have served seven years apprenticeship to one and the same trade,) from participating in the election of the members returned by that city.

Statutes requiring residence of the freeholders.

By the acts of the 1st Hen. V, the 8th and 10th of Hen. VI, and others of that date, it was enacted that persons should vote for those counties only in which they were resident, and this continued the law until it was repealed by the stat. of the 14th Geo. III. Assuming, therefore, that the counties of Warwick and Coventry must be considered as distinct counties, with reference to the exercise of the elective franchise, these statutes would have precluded all freeholders resident in Coventry from voting at the election of knights for Warwickshire. But these counties could not have been considered to be thus distinct and separate, because it appears from the evidence to be collected from the visitation books preserved in the Heralds College, and the parish books and registers of Coventry, that

Argument for the Petitioners.

whilst those acts which required residence of the freeholder were in force, several persons who were then resident in Coventry actually signed the return of knights for the county of Warwick to several different parliaments. It is clear the committee cannot decide that the elective franchise of the freeholder, which is a common-law right, can be either altered or destroyed, indirectly and by implication, by any of the means just alluded to. Or at all events, however plausible such arguments may be deemed with respect to those corporate counties, where, as at Nottingham, the freeholders of the new-made county vote in conjunction with the freemen for the town members, they certainly cannot be considered applicable to a place like Coventry, where no equivalent is given or proposed in exchange for those rights, which it is assumed have been destroyed.

Land tax.

It was considered as a material point at the election, that Coventry was assessed separately to the land tax; that, however, will be shown to be a mistake by the duplicate of the assessment returned into the Remembrancer's office in 1693 *. The first land-tax acts

* It was by the 10th Anne, c. 23, s. 2, that freeholders were first disabled from voting for such tenements as were not assessed to the public taxes, and then this provision was introduced, not as a proof of locality, but as a criterion of value, and as an additional means of preventing the splitting of freeholds, and the creation of fraudulent votes. By this statute it is enacted, that "no person shall vote for the electing of any knight of the shire within that part of Great Britain called England, in respect or right of any lands or tenements which have not been charged or assessed to the public taxes, church rates, and parish duties, in such proportions as other lands or tenements of 40*s.* per annum within the same parish," &c. The 12th Anne, stat. 1. c. 5, reciting the provisions of 10th Anne, and that "it was only

Argument for the Petitioners.

Subsidy act, 1 W. & M.

were little else than a continuation of the old subsidy acts, and were passed annually from 4th William and Mary to the 37th Geo. III. By the subsidy act of the 1st of William and Mary, the county of Warwick, with the county of the city of Coventry, is assessed at 1,192 *l.* 8 *s.* 9 *d.*; but the county of the city of Worcester, which is situate within the county of Worcester, is separately assessed at the sum of 55 *l.* 19 *s.* 6 *d.* whilst the county is assessed at 1,053 *l.* 15 *s.* And again, the county of Kent is assessed together with the county and city of Canterbury, and that of Hamp-

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intended thereby to ascertain the *value* of lands or tenements, by making the proportion paid to the public taxes, &c. the measure of the value," makes an exception in favour of such persons as were possessed of a freehold interest in tithes, chambers in the inns of court, &c. which have not usually been assessed to such public taxes, &c. These provisions were repealed by the 18th G. II. c. 18, s. 2, and in lieu thereof sect. 3 enacts, that "no person shall vote for the electing of a knight or knights of the shire to serve in parliament for that part of Great Britain called England, or the principality of Wales, in respect or in right of any messuages, lands or tenements, which have not been charged or assessed towards some aid granted, or hereafter to be granted to his Majesty, his heirs or successors, by a land-tax in Great Britain, twelve kalendar months next before such election." Further alterations have been made since the introduction of the land-tax redemption acts, which it is not necessary to notice, enough having been stated to show that, at the time the assessment referred to was made, there was no particular obligation on the commissioners to observe the boundaries of counties in arranging the kingdom into such subdivisions as might then be thought most convenient for the collection of a public tax, which at that period was merely considered as a matter of revenue.

Argument for the Petitioners.

shire with the county of the town of Southampton and the Isle of Wight. And it appears from the duplicate assessment of 1693, that Coventry still continued to be assessed as part of the county of Warwick, because, under the heading of "Com. Warwick," the first entry is the "City of Coventry," and then follow the wards of the city, and next all those places by name which now constitute the county of the city of Coventry. It, however, may be said, that there are separate commissioners appointed for the county of Warwick and for that of Coventry. Separate commissioners, however, are frequently appointed for places which have no pretension to be considered distinct counties, as in the case of Somersetshire, where there are separate commissioners of the land tax appointed for the county of Somerset, the county and city of Bristol, the city of Wells, the borough of Bridgewater, and the city of Bath, whilst it is notorious that the three last-mentioned places are indisputably part of Somersetshire.

Usage at Canterbury, Poole and Southampton.

Considering the elective franchise of the freeholder as a common-law right, it will be admitted that it is material, when putting a construction upon the exercise of it, to consider how it is affected by usage in places similarly situated. It has been admitted that the corporate counties of Canterbury, Poole and Southampton, were separated by charter from the counties of Kent, Dorset and Hants, in like manner as Coventry from that of Warwick; that they also, by the same charters, were made distinct counties, with separate officers and separate sheriffs, and yet that, in each of these places, the freeholders continue to vote at the election of knights for those counties from which they have been respectively separated. It is true this practice has never received the sanction of a decision of the House of Commons, but the legality of it has never been called in question; and under such circumstances,

when the right itself is so important, and so many opportunities must have occurred of calling it in question, the evidence of long and uniform usage must be considered as strong testimony of right. It is also true that the freeholders of Coventry have seldom exercised the right of voting for Warwickshire; but this is not one of those private rights which may be lost for want of usage: it is a trust vested in the freeholders by the common law of the land, to be exercised for the benefit of the community at large. Such a right may be dormant, but it cannot be extinct.

Argument for the Petitioners.

Another important point to be considered is the power of the crown, by charter, to deprive any body of persons of the right of voting for any particular place. This question may be considered in two points of view: First, how far the crown, by mere dint of prerogative, can dispossess any class of persons of their rights against their consent: and, secondly, even with their consent, how far the crown, and the voters themselves, are competent to unite, not merely for the purpose of disfranchising themselves of their personal privileges, but all succeeding generations also. In other words, to disfranchise the freeholds themselves of the rights and liabilities attached thereto by the common law.

Power of the crown by charter to affect the elective franchise.

Under the title of "Who shall be electors of knights, citizens and burgesses, how and when, and of elections," the following passage will be found in Lord Coke's 4th Institute:—

"If the king doth newly incorporate an ancient borough, (which sent burgesses to the parliament,) and granteth that certain selected burgesses shall make election of the burgesses of parliament, where all the burgesses elected before, this charter taketh not away the election of the other burgesses. And so if a city hath power to make ordinances, they cannot make an ordinance that a less number shall elect burgesses for

p. 48.

Argument for the Petitioners.

the parliament than made the election before; for free elections of members of the high court of parliament are *pro bono publico*, and not to be compared to other cases of elections of maiors, bailiffs, &c. of corporations, &c."

So that if antecedently to the charter of the 30th Hen. VI, the right of voting vested indiscriminately in all the freeholders of the county of Warwick, the king could not, when he honoured Coventry and the surrounding district with the title and dignity of a county, deprive the freeholders thereof of the right they then enjoyed, of voting at the election of knights for Warwickshire.

Chippenham Case, Glanville Rep. p. 54.

The same principles are laid down in the resolution of the House of Commons on the Chippenham Case. "Secondly, it was conceived by the committee, and so reported to the House, and there resolved, that the said charter of queen Mary did not, nor could alter the form and right of election for burgesses to the parliament within the said borough from the course there before, time out of mind, held; so as if, before this said charter, all the burgesses and inhabitants called freemen, or any other larger number of qualified persons, had already used and ought of right to make the election, then the charter, although it may incorporate this town, which was not incorporate before, or may alter the name or form of the corporation there in matters concerning only themselves, and their own government, rights and privileges, yet it cannot alter and abridge the general freedom and form of elections for burgesses to the parliament, wherein, as aforesaid, the commonwealth is interested. For then, by the like reason that it might be brought from the whole commonalty, or from all the burgesses of a town, to a bailiff and twelve, so might it be brought to a bailiff and one or two burgesses, or to the bailiff alone, which is against the

general liberty of the realm, that favoureth all means tending to make the election of burgesses to be with the most indifferency, which, by common presumption, is when the same are made by the greatest number of voices that reasonably may be had, whereby there will be the less danger of packing or indirect proceedings. And howsoever the said letters patent, touching some other points, may have made an alteration in the said borough, yet touching the matter of election of burgesses to the parliament the form remaineth, and the same course is to be held as was of right before the said letters patent."

Argument for the Petitioners.

It may be argued, that the right of voting, accompanied as it was by the liability to contribute towards the expences of the knights to be elected, might be considered (as in fact it was) a burden, rather than a privilege, and one from which the subject might be desirous of being discharged. But the crown had no more power to discharge a freeholder from this liability, than it had to deprive him of the right; because the liability being general, and for the good of the realm, all had an interest therein; and, consequently, no particular body of contributors could, by any act or acquiescence of theirs, be discharged from the liability to contribute their quota, as may be learnt from this passage in the 4th Institute concerning charters of exemption. "The king cannot grant a charter of exemption to any man to be freed from election of knight, citizen or burgesse of the parliament, (as he may do of some inferior office or places,) because the election of them ought to be free, and his attendance is for the service of the whole realme, and for the benefit of the king and his people, and the whole commonwealth hath an interest therein." p. 49.

It is a legal maxim, that what cannot be done directly cannot be done indirectly. Now it has been

What cannot be done directly cannot be done indirectly.

Argument for the Petitioners.

shown that Hen. VI. could not, by charter, directly either annihilate the elective franchise of the freeholders of Coventry, or discharge them from the liabilities attendant on it. But if the necessary effect of the charter granted by that king to Coventry in the 30th year of his reign, by which it was separated from Warwickshire and made a county of itself, would be either to deprive the freeholders of Coventry of the elective franchise for Warwickshire, or to discharge them from the liabilities incident to it, such a charter must in law be so far equally void, as if, upon the face of it, it purported to be a charter either of disfranchisement or enfranchisement. For if not, the crown would easily be able to evade all restrictions to which it is subject, and by which it is precluded from curtailing the extent to which the elective franchise is enjoyed by the subjects of this realm. But the House of Commons have decided this point on the hearing of the petition against the return for Yorkshire in 1735, which was a case in all respects like the present. In that case the freeholders of the Ainsty of York claimed to vote at the election of knights for Yorkshire, notwithstanding that district had been separated from the county of York, and made part of the county of the city of York, by letters patent of Hen. VI, in like manner as Coventry was made a county of itself by that king, and yet the House "Resolved, that persons whose freeholds lie within that part of the county of the city of York which is commonly called the Ainsty, have a right to vote for knights of the shire for the county of York." But perhaps it will be said that these letters patent contain a reservation to the church of York, and all other persons, of all kinds of franchises, rights, commodities and customs, and so forth, to them or any of them of right belonging; these, however, are little more than words of course, which ar

Ainsty case.

Journals, v. 22, p. 622.

to be found in most charters, and probably in that granted to Coventry, and therefore cannot be considered as important, or controling the resolution of the House in this case.

Argument for the Petitioners.

There is yet another point of view in which this case may be considered. It has frequently been decided by the courts of law, that a place may be treated as situated in one county for some purposes, and in another for others.

Sherrey v. Richardson, Popham's Rep. 16.

The city of Gloucester having been made a county of itself by a charter of Ric. III, which granted "that the town of Gloucester, &c. shall be a county of itself, separate and distinct from the county of Gloucester for ever, and no part of that county;" it, notwithstanding, continued the custom to try within the new-made county, all causes, and prisoners for offences committed within the county at large. This charter, however, contained this reservation: "Nevertheless, saving and reserving to himself and his heirs, that the justices of the assize for the county of Gloucester, the justices of the gaol delivery, and of the peace, in holding their sessions, and also the sheriff of the county of Gloucester in holding of his county courts, and every of them, may freely enter into the said town, and keep the said sessions and county courts of and for any thing or matter arising out of the said county of the said town aforesaid, and within the said county of Gloucester, as before time they had accustomed to hold them there, the said grant or any other thing notwithstanding."

In the reign of Elizabeth, Sir William Periam having doubts whether, under this charter, he could legally try prisoners within the county of the city of Gloucester for offences arising in the county at large, previously to his going the circuit consulted the judges upon this point, who all agreed that the saving in this charter was "sufficient for the justices of assize and

Argument for the Petitioners.

gaol delivery to sit there for the things which happen within the county of Gloucester; for as the king may by his letters patent make a county, and exempt this from any other county, so may he, in the making of it, save and except to him and his successors such parts of the jurisdiction or privilege which the other county, from which it is excepted, had before, as in other places of the realm." And this decision of the judges in the reign of Elizabeth, was subsequently reviewed and confirmed upon a similar point, and after argument, in the King's Bench, in the time of Lord Mansfield, who, in his judgment, says, Gloucester "was made a distinct county, but with an exception that the judges for the county at large might still try causes there. The king cannot, by his charter, give judges a power to try in one county offences committed in another. That was admitted in the case before the judges, as reported by Anderson; but it was answered, that he had continued the city as part of the county at large;" and in this opinion all the other judges concurred.

R. v. Gough, 2 Dougl. 791.

Sherrey v. Richardson.

The decisions of the judges in these cases were reviewed, and treated as sound law, in the late case of Johnson *v.* Dealtry and others. The question in this case arose upon the liability of a district called Craike, which is locally situated within the county of York, but which always had been treated as part and parcel of the county of Durham, to be assessed to the county rate for Yorkshire. In the case drawn up for the opinion of the Court of King's Bench, it was stated, among other things, that "the district of Craike was a manor and ancient possession of the bishop of Durham, situate in the North Riding of Yorkshire, and in the wapentake of Bullmer, at some distance from the body of the county of Durham. There are justices of the peace resident in and exercising jurisdiction over

3 Barn. & Ald. p. 72.

Argument for the Petitioners.

the district of Craike, who are appointed by and act under the commission of the peace for the county of Durham, and not for the North Riding of Yorkshire. The freeholders of Craike have always voted at the county elections for Durham, and not for Yorkshire; and the fines of lands in Craike have always been levied in the courts of the county palatine of Durham." In giving the decision of the court, chief justice Abbott says, "My judgment is confined solely to the point, whether Craike, admitting it to be parcel of the county of Durham for some purposes, is assessable to the rates for the county of York. I am of opinion, from the evidence laid before us, that Craike is liable to contribute to the county rates of the North Riding. From time immemorial Craike has been parcel of the county of Durham; whether it became so at the time of the original separation of the land of the two counties of Durham and York, or whether, having originally been part of the county of York, it was made part of Durham, when the latter became a county palatine, in consequence of being part of the possessions of the bishop of Durham, we do not know. When either of these events, however, took place, it may possibly have happened, that it was then settled that Craike should be contributory to the burdens of the county of York, and not to those of Durham. Then, if that may have been done, the question upon the evidence before us is, whether we ought not to conclude, that what might lawfully have been done at one or other of those periods, was in fact done. All the usage leads to that conclusion, and there is nothing against it." Mr. Justice Bayley also observed, that he thought it quite clear, for the reasons already given, that a place may be considered in one county for certain purposes, and for others in another; in which opinion Mr. Justice Holroyd concurred, referring to the cases of Sherry *v.* Richardson, and R. *v.*

Argument for the Petitioners.

Gough, as having established that principle. Nothing can be clearer than the rule of law established by these cases, viz. that it is by no means necessary that a place should be in one and the same county for all purposes; but that where the king expressly, or the law impliedly, reserves out of any charter, by which a town is erected into a county, the power of considering the new-made county, for certain purposes, as part and parcel of the old county, that may well be done. Therefore, to apply these legal principles to the present question, it may be admitted that Coventry was made a separate and distinct county from that of Warwick, by the charter of 30th Hen. VI, for certain purposes; and even for all that it was in the power of royal prerogative to effect: but still that of necessity, and by the operation of law, it must still remain, and be treated, as part of the county of Warwick, for all other purposes; and it having been shown, on the authority of Lord Coke, and by the resolution of the House of Commons in the Chippenham Case, that it was not within the prerogative of the crown, either by or against the consent of the holders, to take away, by charter, the elective franchise from any body of the subjects of this realm, it follows, as a necessary consequence, that so far as the elective franchise of the freeholders is concerned, Coventry must be considered as still forming part of the county of Warwick, and the charter of Hen. VI. as inoperative upon this point. Observations might also be made upon the inconveniences that would arise, and the danger in which the constitution of this country might have been placed, particularly in such times as those of Hen. VI, if the crown had possessed, as it is contended it did, the power of thus disfranchising any given or unlimited portion of its subjects; it, however, will be unnecessary to follow up this line of observation, as the mere suggestion of it will be sufficient.

Substance of the Arguments of Counsel for the sitting Member.

Argument for the sitting Member.

The question to be decided is, whether a person, whose freehold is admitted to be locally within the county of the city of Coventry, is entitled to vote at the election of knights for the county of Warwick. The *onus* of proof lies with the petitioners who seek to establish the vote, for which purpose they must prove, that the voter in question, at the time he tendered his vote, was possessed of a freehold of the annual value of 40*s*. duly assessed to the land-tax, situated actually or constructively in the county of Warwick.

Freehold in Warwickshire to be established by the petitioners.

An endeavour has been made to show, that previous to the charter of the 30th Hen. VI, the freeholders of the city of Coventry exercised the elective franchise for the county of Warwick. This is the basis of the petitioners case; and it will be for the committee to say to what extent it has been proved. To establish this part of the case, it has been stated, that the district now composing the county of the city of Coventry, was not the demesne land of the crown, and that it was neither held in frankalmoigne, nor by copyhold tenure. And inquisitions *post mortem*, and writs directed to the sheriff of Warwickshire, have been produced to show, that Coventry at one period was considered as part of Warwickshire. It however appears, by the inquisition and extent of the 3d Ed. I, that the manor of Coventry then included the same district which at present forms the county of the city of Coventry; and further, that by the charter of 18th Ed. III, Coventry was invested with a distinct and separate jurisdiction, with the power of holding courts, and returning writs, distinct from the county of Warwick, without the intervention of the sheriff of that county.

Evidence to show Coventry a separate jurisdiction prior to 30 Hen. 6. Inquisition, 3 Ed. 1.

Ch. 18 Ed. 3.

Argument for the sitting member.

County elections, how to be made.

By a statute of the 7th Hen. IV, it is enacted, that "at the next county court, to be holden after the delivery of the writ of the parliament, proclamation shall be made in the full county of the day and the place of the parliament, and that all they that be there present, as well suitors duly summoned for the same cause as others, shall attend to the election of the knights for the parliament, and then, in the full county, they shall proceed to the election," &c. &c. This statute requires the knights of shires to be elected in the county court of that county for which they are elected, and by the suitors of that court. But the charter of Ed. III. shows, that Coventry was independent of the county of Warwick, and the sheriff of that county excluded from making execution therein, previous to the 30th of Hen. VI.; consequently, the freeholders of Coventry could not have been suitors of the county court for Warwickshire at that period.

Electors of knights of shires, who.

Subsequently, the acts of the 8th and 10th of Hen. VI. were passed, which require, "that the knights of all counties within the said realm, to be chosen to come to the parliaments hereafter to be holden, shall be chosen in every county by people dwelling and resident in the same, whereof every man shall have freehold to the value of 40*s*. by the year, at least, above all charges, within the same county." The 8th of Hen. VI. requires the residence of the voter, and regulates the value of the freehold necessary to entitle its possessor to a vote. The 10th Hen. VI. recites, that no express mention was made by the 8th Hen. VI, "that every man that shall be chooser of any such knights shall have freehold to the value of 40*s*. at the least, above all charges, *within the same county*, where such chooser, with others, shall make such election, and to make plain declaration of the said statute," (reciting the requisites required thereby), enacts, in

c. 7.

c. 2

addition, *that the freehold should be situate within the county for which the chooser should make election.*

Argument for the sitting member.

These acts of parliament required that the freeholder should be resident, and his freehold situated, in that county for which election was to be made, and so the law continued down to the 14th of Geo. III. when an act passed dispensing with the residence of the freeholder. But the locality of property assumed to be necessary by the 7th Hen. IV, and positively required by the 10th Hen. VI, has been further secured by the oaths imposed on all freeholders by the 7th and 8th W. III, the 10th of Anne, and the 18th of G. II, by which every freeholder before his vote is received may be called upon to swear that, at the time when he tenders his vote, he is possessed of a freehold of the annual value of 40 *s*. within that county for which he tenders to vote.

Residence.

14 G. 3, c. 85.

7 & 8 W. 3. c. 25.
10 Anne, c. 23.
18 G. 2, c. 18.

It therefore appears that freeholders of Coventry could not, legally, have participated in the election of the knights of the shire for the county of Warwick, either before or subsequently to the charter of the 30th Hen. VI, as previous to that charter they cannot be considered to have been suitors of the court of that county, or subsequently as either residing or possessing property within it.

A place may be in one county for one purpose, and in another for others.

It has been said that a place may be constructively as well as actually within a county, and cases have been cited to show that places have been held to be within one county for some purposes, and within another for others.

This is not disputed; but it is contended that Coventry is not so situated. To establish such an exceptive locality, some evidence must be adduced, either of an act of parliament or of a royal charter, granting this divided locality, or else of some usage from which the existence of either the one or the other

Argument for the sitting Member.

might be presumed. But in the present case no such grant or act of parliament is produced, and the usage rebuts the presumption that any such document ever did exist.

Evidence of usage before the charter.

The evidence of usage before the charter of 30th Hen. VI. merely consists of the entry read from the corporation-book of Coventry, relative to the knights expences; an entry in a book into which it appears to have been copied amongst others of a much later date, and which is too loose and uncertain in itself, even if appearing in a less questionable shape, to raise any conclusion upon.

Subsequent to the charter.

The evidence by which it has been attempted to show that subsequently to the charter of 30th Hen. VI, namely, in 1679 and 1684, persons resident in Coventry have voted at elections for Warwickshire, is equally unsatisfactory. Only five or six names can be found, and it does not appear whether the persons who signed those returns, either possessed or voted in right of freeholds situate in the county of Coventry or that of Warwick. It merely amounts to this, that certain names are signed to the returns of knights for Warwickshire of those dates, and that at the same time there were persons of the same names residing in Coventry, but whether such was their principal or only residence does not appear. It however should be recollected that although the law did at that time require that a freeholder should not vote for any county in which he did not reside, still that this law had then, and long before, become in practice obsolete, as is stated in the preamble to the 14th G. III, which repeals all those enactments which require residence of the freeholder. Much stress therefore cannot be laid upon evidence of this nature, even if it were more distinct; but as it appears upon the minutes of the committee it amounts to nothing.

Usage against the claim.

The evidence of usage on this point is very strong

against the claim now set up, there being the uninterrupted usage of 360 years against it, and during which no attempts have been made to assert any such right. Usage is strong evidence of right. It is evidence from which grants and even acts of parliament have been, and still may be, presumed; it is also evidence of the construction put upon such instruments at the time they are granted or made; and on this latter point there is the evidence of 360 years uninterrupted usage under the charter of 30th Hen. VI, which is in unison with the general practice of the realm, conformable to the laws affecting the elective franchise of freeholders; and, at the same time, decisive against the claim now advanced. It also appears from the poll-book for the county of Warwick for 1774 (in which year that country was strongly contested) that only one freeholder of Sow voted, and that he is therein designated as of that part of the parish of Sow which is in the county of Warwick, the other part being in that of Coventry; and it also appears from this poll, that no one voted on that occasion for any freehold situated within the county of the city of Coventry. It also should be recollected that the evidence of separation to be collected from usage is not confined to the acts, or rather the forbearance of the freeholders of Coventry in not interfering with the election of the knights for the county of Warwick, but that these two counties are in all other respects distinct and separate; that there are separate sheriffs, and a distinct magistracy; that all offences arising within the county of Coventry are tried there; that the jurisdiction of all the officers of the two counties are perfectly separate and distinct; that the county rates, and all the other public burdens are equally distinct, and that the land-tax assessments are returned to the clerks of the peace for each county respectively.

Argument for the sitting Member.

Poll, 1774.

Argument for the sitting member.

Chippenham Case.

It is not intended to dispute the law as it controls the power of the crown with respect to the elective franchise, either as maintained by Lord Coke, or as stated in the resolution of the House of Commons in the Chippenham Case; but it is contended that the principles there laid down do not govern this case.

It is not contended that the charter of Hen. VI. has in terms made any alteration in the elective franchise of the Coventry freeholders; but the question is, whether that district on being made a distinct county did not become subject to the same statutory restrictions as governed the exercise of this right in the other counties of England.

What cannot be done directly cannot be done indirectly.

The legal proposition, that what cannot be done directly cannot be done indirectly, is admitted; but at the same time it is submitted, that it is also a maxim of law that the king shall not be presumed to have done that indirectly which he had the power to have done directly.

It is admitted that Hen. VI. had the power of making the city of Coventry a distinct and separate county, for certain purposes; but it has been argued that this power was limited, and that for other purposes the new made county must remain *ex necessitate*, and by operation of law, part of that from which it was separated by charter. That however, it is submitted, is not the case. It is laid down as clear law in the cases cited on the other side (and which it was intended to have relied upon on behalf of the sitting member), that the crown did possess the power of making a county either altogether or in part; and Mr. Justice Holroyd, in his judgment in Johnson *v.* Dealtry, cites the decision of the judges in Sherry and Richardson, to show that the king by his letters patent may make and except a place from any other county, and in the making of-

Sherry *v.* Richardson; R. *v.* Gough; Johnson *v.* Dealtry and others.

it may save and except any part of the jurisdiction or privilege which the county from which it is excepted had in it before.

Argument for the sitting Member.

The cases here alluded to arose out of the charter granted by Rich. III. to Gloucester, which, at the same time that it made the city of Gloucester a county of itself, reserved to the judges of assize, the sheriff, and the justices of the peace, the power of holding their respective courts within the county of the city for the trial of matters arising in the county of Gloucester. The court of King's Bench held, that the king had no power to give these officers authority to act out of that county for which they were appointed; but that he had authority to say to what extent he would alter the locality, and the privileges of the district to which he granted the charter; and that in this case the reservation just alluded to must be construed to have continued the booth hall of the county of the city of Gloucester, part and parcel of the county of Gloucester, for all the purposes therein enumerated. So in this case it is admitted that Hen. VI. had no power to alter directly the elective franchise of the freeholders of Coventry; but it is at the same time submitted, that he had the right of separating that district entirely, or in part only, from the county of Warwick; and that he exercised this power by separating Coventry entirely, and without any reservation, from the parent county, upon which it became a county for all legal purposes, and consequently by operation of the statute law, the freeholders within it could not afterwards participate in the election of knights for the county of Warwick.

Ainsty case.

This point is fully illustrated by the decision of the House of Commons in the case of the Ainsty of York, though that case does not correspond with the present, but is in many respects widely different. That was the

Argument for the sitting Member.

case of an exceptive, this of an absolute charter of ration.

York, being a county and city of itself, petitioned Hen. VI. to add the district of Ainsty to the county of the city, and in compliance with this petition, letters patent of separation from the county of York, and of annexation to the county of the city, were granted; but with this exception, "Saving always to the church of York, and the archbishop, dean and chapter thereof, and every other community, spiritual and temporal, *and all and singular other persons, all kinds of franchises, privileges, rights, commodities and customs, to them or any of them of right belonging.*" It was upon this exception in the letters patent of annexation, that the freeholders of the Ainsty claimed to vote for the county of York, and the committee, consistently with the resolution of the judges in the case of Sherry and Richardson (which had then been decided), confirmed the claim. It cannot be doubted that the House of Commons decided upon this reservation, because the claim was confined to the freeholders of the Ainsty, who produced the letters patent, and relied upon this reservation as the ground on which the right was claimed, and the freeholders of the other parts of the county of the city of York have never claimed this right, although the elective franchise for the city members is confined to the freemen.

It is not disputed that the words by which Coventry was made a county of itself, and those by which the district of Ainsty was separated from the county of York, are equally explicit; but the reservation of privileges in the Coventry charter is different, being confined to the corporate privileges of the grantees only. "Moreover, we will and grant to the aforesaid mayor, bailiffs and commonalty, and their successors, that they shall have, hold, and use all and singular other

the franchises, liberties, immunities, quittances and customs, from article to article, which the aforesaid mayor, bailiffs and commonalty, or their ancestors or predecessors by whatsoever names, have had and used before our present grant," &c. It will also be recollected, that the Ainsty was undoubtedly part of Yorkshire before it was annexed to the county of the city of York, whilst it has been shown that, previous to the 30th Hen. VI, Coventry had separate courts, and the return of writs, &c. distinct from Warwickshire, and to the exclusion of all officers, excepting those of the city of Coventry*. And further, that the letters patent by which the Ainsty was annexed to the county of the city of York, were not like the charter to Coventry, granted for the benefit of the grantees, but at the request and for the advantage of the mayor and citizens of the city of York, a circumstance quite sufficient to account for the differences in the reservation therein contained.

Argument for the sitting Member.

As a question of precedent, it has been admitted to the petitioners, that, in the instances of Canterbury, Poole, and Southampton, the freeholders do vote at the election of the knights for the counties of Kent, Dorset, and Hants; but at the same time they have admitted, that, in those of Norwich, Nottingham, Lichfield, Haverfordwest, Exeter, Bristol, York, Gloucester, Worcester, Newcastle-upon-Tyne, and Kingston-upon-Hull, the

Practice in other corporate counties.

* The charters creating corporate counties generally recognise the town so made as then part of that county from which it is separated. It also frequently happened that the return of writs and exclusive jurisdictions had previously been granted to the mayor or bailiffs, to the exclusion of the sheriff of the county of which up to that period it formed an integral part, and in these respects Coventry was similarly situated to the majority of the other corporate counties.

Argument for the sitting Member.

freeholders did not vote for those counties from which these places were respectively separated. Therefore, in this view of the case, it is eleven * to three against the claim of the petitioners. And one instance in which the right is altered is stronger than several where it is not, because the latter may happen through neglect or inattention, whilst the former shows that a construction was put upon the charter inconsistent with the pre-existing state of things, and that construction is fatal to the present claim. It also appears from the admissions, that in five out of the eleven places mentioned, the freeholders do not vote in conjunction with the freemen, for the town or city members, as is the case at Coventry; consequently the circumstance of the right of voting for that place being now confined to the freemen, cannot affect the present question. It is also important to observe, that the charters of Southampton and Poole, like the letters patent granted to the Ainsty of York, are exceptive, the reservation of privileges extending to the inhabitants, and not being confined to corporate matters alone; therefore Canterbury is the only instance on which the petitioners can rely †. Several of the places mentioned were made distinct counties much later than Coventry, and when the privileges of parliament were better understood, and the

* As a matter of precedent it is sixteen to three, as Coventry, Lincoln, London, Carmarthen and Chester, ought to be added to the list of eleven, and so it was argued before the committee; but the admission only covering those eleven named in the text, and no proof having been given of the practice in the four last-mentioned places, it was necessary to confine all observations to those places, the objection having been taken to including the greater number.

† *Sed vide* the observations on the reservation in the Canterbury charter, *ante*, p. 98.

rights of electors more duly appreciated, than in the reign of Hen. VI; consequently any alteration in the rights of freeeholders at such periods would be more pointed, and of greater authority as a matter of precedent.

Argument of the sitting Member.

Observations have been made on the peculiar situation in which the freeholders of Coventry will be placed, if it is decided that they have no votes for the county of Warwick, the right of election for Coventry being settled, not only by a decision of the House of Commons, but also by act of parliament, to be in those freemen who have served seven years apprenticeship to one and the same trade. But this is not a point necessary to be considered at present. Whether the right in question ceased for the parent counties by operation of the statute law, and revived for the new-made counties by force of the common law, and whether, if it did so survive, it could subsequently be lost by *non user*, are subjects which may be well worthy of consideration upon another occasion, but which do not require any decision at present. That the elective franchise of the freeholders did revive for the new-made counties is probable, both upon principle and from the several instances in which it has been exercised, as a right incident to the change in local description effected by their respective charters.

Right of voting at Coventry.

Much stress has been laid upon the fact that, in the reign of Will. III, Coventry was included in the same assessment to the land tax with Warwickshire. This however is not a material point, because it is well known that the connection between the land tax and the elective franchise was introduced as a criterion of value, and not as a definition of boundary. But it was adverted to at the election, and is now, merely for the purpose of showing that, in all the regulations affecting the exercise of the elective franchise by freeholders,

Land tax.

Argument for the sitting Member

it is assumed to be exercised for that county only in which the freehold is actually situated. How the lands within the county of the city of Coventry are assessed matters not; but it is in evidence that the land-tax assessments for that county are returned to the town clerk of Coventry, who is also the clerk of the peace for the county of the city, and so far the practice is in unison with that of all other counties; the legislature having provided that the depositary of each voter's title, so far as it rests upon the land-tax assessments, should be with the officer of that county for which he is entitled to vote.

How then does this case stand? The charter of 30th Hen. VI. grants, that the city of Coventry, and the other places therein mentioned, "shall, from the feast of St. Nicholas next ensuing, be one entire county of itself, corporate in deed and in name, and distinct and wholly separated from the said county of Warwick for ever, and not parcel of the said county of Warwick; and that the same county, so separated from the said county of Warwick, shall be for ever distinctly and separately named, called, and entitled the county of the city of Coventry." The wording of this part of the charter is distinct and intelligible, and that it has always been deemed operative may be learnt from the unvarying usage of 360 years. It also appears from the cases which have been cited, that the favour extended by Hen. VI. to Coventry was such which the crown was authorized to grant, and the people entitled to receive; and from the fact that, between the 47th Ed. III. and the 19th Jac. I, the same favour was granted to seventeen other places, that it was one which the crown was accustomed to confer.

It also appears from the cases alluded to, that Hen. VI. might have separated Coventry from Warwickshire

either in part or altogether, and from those of Gloucester and the Ainsty of York, that in some instances exceptive or partial charters of separation were granted; but the language of that granted to Coventry shows that it was not of such description, but absolute and entire. Then the same cases showing that the law applies itself to the new-made counties according to the terms of the charters by which they are created, it is presumed that the committee must decide, that Coventry is not actually a part of the county of Warwick, the words of separation and creation in the charter of 30th Hen. VI. being sufficient to make it a county of itself. It cannot be considered as constructively part of that county, as there is no reservation expressed in the charter, or any usage prevailing at Coventry which can justify such a conclusion. Then, being a distinct county, the stat. of 10th Hen. VI. must apply as forcibly to it as to any other county; consequently those persons who possess freeholds in the county of the city of Coventry, do not, in virtue of those freeholds, possess any right to vote at the election of knights for the county of Warwick, and therefore the vote of Joseph Sowden cannot be added to the poll.

Argument for the sitting Member.

Substance of the arguments of counsel in reply.

The reply.

It is submitted that the two points of fact contended for on behalf of the petitioner have been made out. The writs by which the sheriff and escheator of the county of Warwick were directed to act within the town of Coventry, previous to the charter of 30th Hen. VI, show that Coventry was then an integral part of Warwickshire; and the fact, that the lands composing the county of the city were freehold, necessarily raises the presumption that the possessors of them exercised all the rights of freeholders of the county of Warwick.

Petitioners evidence.

The Reply.

This alone after a lapse of 360 years would be sufficient evidence to raise such a presumption, it however is strongly corroborated by the entry in the corporation book of Coventry, particularly as it appears by the charter of R. II, that the corporation of Coventry were at this period seized of purprestures and waste lands, in respect of which they were liable to contribute towards the expences of the knights for Warwickshire in common with the other freeholders of that county.

Evidence for the sitting member.

The inquisition taken on the death of Robert de Montalt does not affect this case. It merely shows that he died seized of the manor of Coventry in the 3d of Ed. I, and that certain portions of knights fees situate within the limits of what now form the county of the city of Coventry were held of that manor.

Effect of Ch. 30 Hen. 6.

It has been argued that the charter of Hen. VI. destroyed the right of the Coventry freeholders to vote at the election of members for Warwickshire, on the ground that since the statute of the 10th of Hen. VI. no freeholder can exercise the elective franchise for any county but that in which his freehold is situated. The whole question in this case is, whether the freeholders of Coventry stand in the same relation to Warwickshire now, as they did before the 30th of H. VI. But admitting the charter of that date to operate for all other purposes, still it is submitted it could not affect the elective franchise of the freeholders. If this objection to the locality of the freehold is in itself decisive, why did it not prevail in the case of the Ainsty of York. But it is contended, that, for the purposes of the elective franchise, those freeholds which are actually situate within the county of the city of Coventry must be considered as constructively within that of Warwick; and that in like manner as it has been decided in the Ainsty case, that the freeholders may swear that their freeholds for all purposes connected with the elective

Locality of the freehold. May be constructive.

franchise are situate in the county of York, so may those of Coventry conscientiously take the oath prescribed by the 18th G. II, and swear that theirs are to the same extent, situate in the county of Warwick.

The Reply.

Much weight has been attached to the terms of reservation contained in the letters patent by which the district of Ainsty was annexed to the county of the city of York; but it is contended that this reservation did not affect that case, nor does it appear that the resolution of the House of Commons proceeded upon it*. Neither is this the proper construction to put upon that reservation. It ought not to be taken as applying to those who were the grantees of the charter, but as a saving of the rights of those who were strangers to it. What is the language of the acts of parliament by which attainders have been reversed? There the savings and exceptions are, not of the rights and privileges of those who are the objects of the favour conferred, but of strangers. So in this case the reservation must not be considered as applying to the inhabitants of the Ainsty, but as a saving of the rights and privileges of those who took no benefit under the charter.

Terms of reservation in the different charters

It is admitted that the terms in which Poole, Southampton and Canterbury are separated from their parent counties are equally absolute and powerful as those in which Coventry is taken from Warwickshire. But it has been argued that the terms of the reservation contained in the charter of Poole and Southampton are more comprehensive than those used in the Coventry charter. It however is submitted, that the difference between them is not material, because it is clear from the manner in which the word *inhabitants* is there used,

* *Sed vide* the account given by Mr. Drake of the proceedings on this petition, *ante*, tit. York, p. 394.

The Reply.

that it was intended to signify the same description of person as the words "burgesses and commonalty," enumerated in the same sentence, and indeed the sense of the whole reservation requires the use of the word "inhabitants" to be confined to members of the corporate body.

Precedent.

As a matter of precedent it has been said, there are eleven instances to three against the claim made by the petitioners. It, however, is admitted, that in six out of the eleven places alluded to, the freeholders vote in conjunction with the freemen at the election of the town or city members; this therefore reduces the majority to two. But one instance in which the right has been asserted and exercised outweighs many negative instances in which it has not been claimed.

The case of Chester, although a county of itself, does not apply; because Cheshire, being a county palatine, did not return members to parliament till enabled to do so by an act of the 35th Hen. VIII, which authorized the county thenceforth to return two knights, and the city two citizens. Chester, therefore, must be considered with reference to that act of parliament.

Right of voting for Coventry.

It has been asked why these freeholders did not vote for the members returned by the city of Coventry. The answer is, that they had no right to do so. Coventry returned members to parliament prior to the charter of Hen. VI. (the writ for whose election passed through the hands of the sheriff for Warwickshire); and the charter of Hen. VI. reserves all former franchises and liberties to the corporate body. Consequently the introduction of this body of freeholders to a participation with the freemen in their return of their members would be inconsistent with the terms of this reservation. And the resolution of the House of Commons, settling the right of voting for Coventry in those freemen who

The Reply.

have served seven years apprenticeship to one and the same trade, effectually, now, excludes all other claimants to this right.

It has been supposed that the elective franchise, although it was destroyed for Warwickshire, revived for the new-made county of Coventry. But upon what grounds? Not upon that of compensation: because this is not a private right, but a public trust. The same reason also prevents its being lost by desuetude or *non user*. It is, in fact, a right intrusted to the freeholder by the common law, to be exercised for the good, not only of himself, but of the community at large, and of which he can neither divest himself nor be divested.

Poll 1774.

No argument can be founded on the poll book of 1774, as instances therein appear of persons having voted from one of the places which form part of the county of Coventry, and which may be adduced in opposition to the entry respecting Sow, which has been relied on; but the number in neither case is sufficient to have any weight as usage.

The right of voting for knights of the shire is a right incidental to the freehold, and cannot be detached or alienated from it. In the case of Ashby and White, Lord Holt says, "The election of knights belongs to the freeholders of the counties, and it is an original right vested in, and inseparable from the freehold, and can no more be severed from their freehold than the freehold itself can be taken away. Before the statute of the 8th of Hen. VI, any man that had a freehold, though never so small, had a right of voting; but by that statute the right of election is confined to such persons as have lands or tenements to the yearly value of 40*s.* at least, because, as the statute says, of the tumults and disorders which happened at elections by the excessive and outrageous number of electors; but

Ld. Raymo d's Rep. v. 2, p. 950.

The Reply.

still the right of election is an original right*, incident to and inseparable from the freehold." This authority is decisive of the present case. These freeholds once formed part of the county of Warwick, when the right of voting for its knights attached to them by force of the common law, and which right nothing subsequently could either detach or destroy. And if the king could not grant a charter for this purpose, still less could it be effected by a charter not granted to the freeholders in question, but to the corporate body of Coventry.

It is therefore clear that the charter of the 30th Hen. VI. could not affect the vested elective rights of those freeholders whose lands were thereby made a new county in conjunction with the city of Coventry; and that, inasmuch as previously to that charter the right of voting for the knights for Warwickshire had attached, the committee must hold that this right still appertains to the freeholds in question, and consequently that the vote of Joseph Sowden ought to be added to the poll.

The committee-room being cleared, the following motion was made and negatived:—

"That before the charter erecting the city of Coventry into a county, in the 30th year of the reign of king Henry VI, the freeholders having freeholds within the said city had a right to vote at the election of knights of the shire for the county of Warwick, that the said charter did not, and could not, divest the aforesaid freeholders of their right to vote at such election, and that, therefore, the vote of Joseph Sowden, a freeholder, whose freehold is situate within the county of the city

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* It is clear, from the whole of this passage, that Lord Holt can only be understood to speak of this right as subject to the regulations imposed by the statute law.

of Coventry, and whose vote was tendered for the petitioner at the last election for the county of Warwick, ought to have been then received, and be now added to the poll." The parties were then called in, and the resolution of the committee communicated to them; upon which the counsel for the petitioners requested permission to put in a statement, in writing, of the right of voting for Warwickshire, as then claimed, in order to obtain such a decision of the committee thereupon, as would entitle them to appeal against it. This was assented to, and statements of the right of voting for the county of Warwick were put in, both by the petitioners and the sitting member. That put in by the petitioners stated:—

Proceedings of the Committee.

Unett, p. 137.

"That the right of voting for knights to serve in Parliament for the county of Warwick, is in the freeholders of the same county, whose freeholds are of the annual value of 40*s.* and duly assessed to the land tax; among whom are included, for the purpose of the right of voting, those freeholders whose freeholds are locally situate in the county of the city of Coventry, or at least such of the last-mentioned freeholders as are not freemen of, or members of the corporation of Coventry."

Petitioners statement of the right of election.

The statement of the right made on behalf of the sitting member was as follows:—

"That the right of voting for knights of the shire for the county of Warwick, is in the freeholders of the county of Warwick only; and that no person, in virtue of any freehold situate in the county of the city of Coventry, has any right to vote at any election of members for the county of Warwick."

Sitting member's statement of the right of election.

The committee then deliberated, and resolved,—

"That the right of election for the county of Warwick, as set forth in the statement delivered in by the counsel for the petitioners, is not the right of election for the said county.

Resolutions of the Committee.

Resolutions of the Committee.

"That the right of election, as set forth in the statement delivered in by the sitting member, is the right of election for the county of Warwick; and also the said committee determine,—

"That Francis Lawley, esq. is duly elected a knight of the shire to serve in this present Parliament for the county of Warwick.

"That neither of the said petitions of Richard Spooner, esq. and Charles Lilly and others, appear to this committee to be frivolous or vexatious; and

"That the opposition to the said petitions does not appear to this committee to be frivolous or vexatious."

THE END.

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